

# **Exhibit H**

1 UNITED STATES BANKRUPTCY COURT

2 SOUTHERN DISTRICT OF NEW YORK

3 Case No. 19-11845-shl

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5 In the Matter of:

6  
7 BSG RESOURCES LIMITED (IN ADMINISTRATION) and WILLIAM  
8 CALLEWAERT and MALCOLM COHEN, as JOINT ADMINISTRATORS,

9  
10 Debtors.

11 - - - - - x

12  
13 United States Bankruptcy Court

14 One Bowling Green

15 New York, NY 10004

16  
17 June 4, 2019

18 2:18 PM

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21 B E F O R E :

22 HON SEAN H. LANE

23 U.S. BANKRUPTCY JUDGE

24  
25 ECRO: MATTHEW

1 HEARING re FIRST DAY CHAPTER 15 HEARING

2

3 HEARING re Doc. #7 Ex-Parte Motion For Temporary Restraining  
4 Order And Relief Pursuant To Sections 1519 And 105(A) Of The  
5 Bankruptcy Code

6

7 HEARING re Doc. #8 Motion To Approve / Application For An  
8 Order (I) Scheduling Recognition Hearing, (II) Specifying  
9 Deadline For Filing Objections And (III) Specifying Form And  
10 Manner Of Notice

11

12 HEARING re Doc. #10 Motion to File Under Seal Re: Affidavit  
13 of Peter Harold Driver

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25 Transcribed by: Sonya Ledanski Hyde

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5  
6 BY: LISA M. SCHWEITZER

7 JONATHAN BLACKMAN

8  
9 ALSO PRESENT TELEPHONICALLY:

10  
11 MALCOLM COHEN

12 SAM DINGLE

1 P R O C E E D I N G S

2 THE COURT: We are here for BSG Resources Limited,  
3 a Chapter 15 case that was just filed.

4 So let me get appearances from counsel.

5 MR. HYMAN: Good afternoon, Your Honor. Rick  
6 Hyman from DuaneMorris. We represent the foreign  
7 representative as joint administrators for BSG Resources.  
8 I'm here with my colleague Jarret Hitchings who submitted a  
9 pro hoc last night. I believe the order was entered today.

10 THE COURT: Great.

11 MR. HYMAN: Thank you.

12 THE COURT: All right. Thank you.

13 MS. SCHWEITZER: Good afternoon, Your Honor. Lisa  
14 Schweitzer from Cleary Gottlieb for Vale, with my partner  
15 John Blackman, also from Cleary Gottlieb.

16 THE COURT: All right. Thank you very much.

17 Anyone else whose -- come on up, and just make  
18 sure that we -- you can use any microphone, just to make  
19 sure we get your appearance noted.

20 MR. BLACKMAN: Sure. Jonathan Blackman from  
21 Cleary Gottlieb.

22 MS. SCHWEITZER: He's talking about the person in  
23 back of you.

24 MR. BLACKMAN: Oh, behind me. I was wondering,  
25 because --

1 THE COURT: Yeah, they come from all directions.

2 MR. MCCALLEN: Good afternoon, Your Honor.

3 Benjamin McCallen, Willkie Farr & Gallagher on behalf of  
4 George Soros and the OSF entities.

5 THE COURT: All right. Thank you.

6 MR. MCCALLEN: Thank you, Your Honor.

7 THE COURT: Anyone else who's making an  
8 appearance?

9 All right. With that, I'll hand it over to  
10 counsel to walk us through what we need to accomplish today.

11 MR. HYMAN: Good morning, Your Honor. And we  
12 appreciate you making the time for us on such short notice.

13 We did, as you noticed, file the petition  
14 yesterday --

15 THE COURT: Right.

16 MR. HYMAN: -- along with an assortment of first  
17 day pleadings.

18 THE COURT: I saw that. And thank you for your  
19 speed in getting the binders to chambers. I appreciate  
20 that. It's -- it makes a big difference, because I tend to  
21 be a paper person for a lot of things still, perhaps it's a  
22 character failing. And so it ends up if I don't get the  
23 binders by a certain point I end up just needing prints  
24 repeatedly and then assembling my own binder. So this is  
25 much preferable and thank you very much --

1 MR. HYMAN: And --

2 THE COURT: -- because I know you didn't have a  
3 lot of time to do that.

4 MR. HYMAN: Yeah. And, unfortunately, we were a  
5 little bit jammed and we made sure to get them down to you  
6 as soon as possibly close to --

7 THE COURT: No, it was fine.

8 MR. HYMAN: -- 5 p.m.

9 THE COURT: The timing was great.

10 MR. HYMAN: Unfortunately what that did is it  
11 delayed our service on some of the other creditors, by a  
12 short period of time. And we did seek to get them documents  
13 as soon as possible. Just for your benefit, Your Honor, and  
14 we filed the certificate of service this morning.

15 We had delivered copies of the various first day  
16 pleadings by email, and delivery, and by FedEx to Cleary  
17 Gottlieb yesterday. We delivered copies by email and FedEx  
18 to Willkie Farr attorneys yesterday as well. In addition,  
19 we delivered FedEx'd copies to Vale, LSL, that was one of  
20 the Debtor's creditors, and Standard Chartered, another one  
21 of the Debtor's creditors, by FedEx to their addresses  
22 overseas, which were the only addresses that we had. We  
23 didn't have any addresses for counsel for those creditors.

24 THE COURT: All right.

25 MR. HYMAN: All right. We're here today on three



1 matters. The first matter is an ex parte application for a  
2 temporary restraining order bridging us either to a hearing  
3 on a TRO, or alternatively, to a recognition hearing which  
4 we hope to set up. Second is the application for that  
5 scheduling order, effectively scheduling a hearing on the  
6 recognition, specifying a date for objections, and approving  
7 the form of notice. Lastly, you'll notice that we filed a  
8 motion to file a declaration, really an affidavit, under  
9 seal, with this Court.

10 Perhaps -- we can take these in any order,  
11 whatever is Your Honor's preference.

12 THE COURT: All right. So for scheduling, I  
13 looked at the calendar and I thought perhaps July 10th in  
14 the afternoon might work, say 2:30, unless, after we get  
15 through matters today people are anticipating a -- something  
16 more lengthy or evidentiary at that point, but you can let  
17 me know. And folks, obviously I'll hear from everybody,  
18 will let me know whether you think that's the case. But  
19 certainly even if that is the case, we could certainly start  
20 it on that date and then see where we go from there.

21 MR. HYMAN: Okay. I should step back for a  
22 moment, Your Honor, and mention that on the phone we have  
23 Malcolm Cohen, who is one of the two joint administrators in  
24 the case.

25 THE COURT: All right.

1 MR. HYMAN: And is the declarant in connection  
2 with the first day pleadings. We also have Sam Dingle from  
3 Ogier who is counsel to the joint administrator's resident  
4 in Guernsey to the extent Your Honor had any questions  
5 regarding Guernsey law.

6 THE COURT: All right. And with that -- thank you  
7 very much for that. Is there anybody else, beyond those two  
8 individuals that have already been identified, who's on the  
9 telephone for this case? All right.

10 MR. HYMAN: Okay. So before we finalize the  
11 scheduling, I would like to comment, to Malcolm Cohen, who  
12 would be, presumably, required to come over for purposes of  
13 the deposition, perhaps, or live testimony, depending on how  
14 things play out. So before we finalize the scheduling, we'd  
15 like to confirm with our joint administrator who has to --

16 THE COURT: All right. That's fine.

17 MR. HYMAN: -- travel many miles to get here.

18 THE COURT: I was just throwing out some dates,  
19 and I thought that would be an appropriate date for purposes  
20 of giving you time for notice, while at the same time trying  
21 to steer clear of some other things on my calendar that are  
22 of uncertain duration at this point.

23 So I have -- currently have some other hearings  
24 earlier that -- well, I won't bore you with the details. So  
25 we'll throw that out and we'll put in a pin that for the

1 moment and return back to it in a minute.

2 MR. HYMAN: Yeah, I think we'd recommended July  
3 11th, so I imagine that July 10th works --

4 THE COURT: All right.

5 MR. HYMAN: -- perfectly well, but we'd just want  
6 to confirm.

7 THE COURT: Okay. Great.

8 MR. HYMAN: We had submitted, as I mentioned, the  
9 declaration of Malcolm Cohen, in support of various first  
10 day pleadings, in addition to ultimate recognition. You may  
11 note, if you had an opportunity to review that, Mr. Cohen's  
12 declaration does cite to an affidavit of, I'm sorry, it's  
13 Peter Driver --

14 THE COURT: right.

15 MR. HYMAN: -- who was one of the members of the  
16 board of the directors of BSG Resources. And it submitted  
17 that paper in connection with its administrator order in  
18 Guernsey.

19 Under the terms of the Guernsey order, those --  
20 that declaration was submitted in camera and remains under  
21 seal. While certain of the information that is contained in  
22 that declaration has been made public since that date, there  
23 is no authorization, from the court in Guernsey, to release  
24 it. There is some additional information that remains  
25 subject to some commercial sensitivity. And we had

1 suggested here, Your Honor, with our motion to file under  
2 seal, that for the benefit of the Court, we would file that  
3 under seal so that to the extent that there is anything that  
4 you need in reference to the declaration from Malcolm Cohen,  
5 or otherwise, you would have it, but beyond that we didn't  
6 intend to share it with any other parties in connection with  
7 the case.

8 THE COURT: So it's the declaration of Malcolm  
9 Cohen, which is at Docket Number 9, will be public and it  
10 would be the exhibit that's the affidavit of Peter Harold  
11 Driver, and the exhibits to that which is sealed in the  
12 court in Guernsey and that you're seeking a sealing order  
13 today?

14 MR. HYMAN: That's correct, Your Honor. You will  
15 notice that we did make certain references in the Malcolm  
16 Cohen declaration. Those were -- that's information that is  
17 -- that's clearly public and we weren't concerned about it.  
18 You will note, in connection with our motion, our sealing  
19 motion, we had also attached an email correspondence,  
20 because it was very late, an email correspondence from the  
21 court clerk in Guernsey who acknowledged that it was fine  
22 for us to file this under seal with your court -- with this  
23 court.

24 THE COURT: All right. So does it make sense to  
25 take these one at a time and hear from all parties, or does

1       it make sense for you to just complete your presentation and  
2       then hear from other parties after you go through  
3       everything?

4               MR. HYMAN: Whatever is your preference, Your  
5       Honor.

6               MS. SCHWEITZER: Your Honor, Lisa Schweitzer.  
7       Sorry to rise in the middle, but it's worth just a sentence  
8       to not bury the lede. This is going to be a contested  
9       matter. We are going to contest (indiscernible), we're going  
10      to contest the sealing, we're going to contest the TRO. And  
11      it's all one big story, so we're happy to let him go and  
12      then we can go.

13              THE COURT: All right. Thank you. That's sort of  
14      what I was trying to, inartfully, get at as we went forward.  
15      All right.

16              MS. SCHWEITZER: Diplomatically.

17              THE COURT: All right. So that's the request on  
18      the TRO. And my -- I'm sorry, on the sealing. My question  
19      for sealing is I couldn't quite tell the basis for sealing.  
20      I understood that it's under seal in Guernsey, but I  
21      couldn't quite tell what the basis for that was.

22              So I think we all know that there's certain  
23      jurisdictions where if you're going to file something, it  
24      actually is filed under seal and you need approval to get it  
25      unsealed. Certainly in the United States people can ask to

1 file something under seal, meaning, essentially that they've  
2 asserted the equity. Other times, again, it's sort of a  
3 court saying we handle proceedings this way. And I couldn't  
4 quite figure out what the -- sort of the -- putting aside  
5 that it's under seal in Guernsey for a second, what the law  
6 was that was the basis for this sealing.

7 MR. HYMAN: Your Honor, I confess that I don't  
8 know the answer to that. We do have Sam Dingle on the  
9 phone, through, who is counsel in Guernsey and may be able  
10 to give you some better color on that. From our  
11 perspective, given the fact that it was under seal, we,  
12 though abundance of caution, filed this with, along with the  
13 sealing motion, certain of this information, certainly as  
14 you can read in connection with the list of the descriptive  
15 -- of the exhibits --

16 THE COURT: Right. And there's a huge --

17 MR. HYMAN: -- is not --

18 THE COURT: -- I mean, there's a huge stack of  
19 stuff.

20 MR. HYMAN: Yes.

21 THE COURT: So I can't confess to have done a  
22 careful study of it. But I think the second binder is that  
23 declaration, and then the exhibits to that. And I can't  
24 begin to put a -- although I guess there are page numbers on  
25 it on the bottom, and I think it's over a thousand pages.

1 So certainly -- but there was a motion of commercially  
2 sensitive information and certain to the extent that that's  
3 what's being invoked, that is very similar to the test here  
4 in the United States, right, that we have in the rules. If  
5 somebody says it would be damaging to the Debtors if that  
6 kind of commercial information, which is -- it would be  
7 anti-competitive to have it released. So I wasn't sure if  
8 there was -- you had any more information you could provide  
9 about that.

10 MR. HYMAN: There certainly are different  
11 disclosure obligations in connection with Guernsey and in  
12 connection with (indiscernible) there are documents that  
13 perhaps in the United States we wouldn't expect to be sealed  
14 from other creditors, but in Guernsey it's commonplace,  
15 including certain information regarding the financials of  
16 the company.

17 So as you look through the declaration, I don't  
18 want to take it page by page, but there is information on  
19 financials that simply is information that wouldn't have  
20 been disclosed in the Guernsey proceeding. And, you know,  
21 what we're trying to do here is effectively recognize that  
22 Guernsey proceeding and try to continue to enforce and abide  
23 by the rules of that proceeding, without expanding upon the  
24 (indiscernible).

25 THE COURT: So let me then go at this a slightly

1 different way, which is to say are the folks who are here  
2 today to be heard, who was and who wasn't a party -- or is  
3 or isn't a party in the Guernsey proceedings, such that they  
4 might have access to the information, or at least have an  
5 ability to seek the information in the Guernsey proceedings?

6 MR. HYMAN: I would venture to say that nobody, to  
7 my knowledge, has information in connection with that  
8 declaration that had been sealed. But again, that's to my  
9 knowledge. I don't think that this has been shared with any  
10 -- for the most part, with any creditors, except to the  
11 extent that it has subsequently become public.

12 THE COURT: All right. So then let me -- again,  
13 we might as well just sort of deal with these things as we  
14 go forward. So what is it that you're going to want me to  
15 take from the information that you provided to me about the  
16 Guernsey proceedings, which by that I mean the proceedings  
17 that are identified in the affidavit of Peter Harold Driver  
18 in the Royal Court of Guernsey, Ordinary Division In the  
19 Matter of BSG Resource Limited, and In the Matter of Part, I  
20 guess it's Roman Numeral 21 of the company's Guernsey Law  
21 2008 and the affidavit and then all the documents that are  
22 attached? And that's -- and so the numbers contained on  
23 those are basically the numbers identified in this affidavit  
24 court sheet, which is basically an index.

25 MR. HYMAN: Yeah, I think I can make it relatively



1       easy, Your Honor. We were submitting that largely so that  
2       you had a reference point back to the declaration, when it  
3       was citing the declaration, necessarily joint administrators  
4       who have been appointed last March do not have all of that  
5       information and don't have the background and history of  
6       some of the activities of the Debtor, and were relying on  
7       that affidavit in making some of the statements. We are not  
8       seeking to admitting into evidence the Driver affidavit or  
9       any of the documentation attached to the Driver affidavit.  
10      To the extent that we were going to do so, we would do that  
11      separately with Your Honor and we could have another  
12      conversation about it.

13               THE COURT: All right. All right. So I guess  
14      we'll see where that leads us to. So that's one issue, one  
15      of the three that you mentioned.

16               So then I guess we might as well segue to the  
17      request for temporary relief, which is styled as a TRO and  
18      address that, and then we can talk about -- see whatever you  
19      need to and want to put on the record.

20               MR. HYMAN: Thank you, Your Honor. I hope that  
21      you did have an opportunity to read the declaration, which  
22      sets forth --

23               THE COURT: Yeah, no, I think I --

24               MR. HYMAN: -- a little bit of the history.

25               THE COURT: -- it's safe to say I've read

1 everything, but I can't claim to have gotten through the  
2 exhibits --

3 MR. HYMAN: Of course.

4 THE COURT: -- that number some 1,000 pages that  
5 are -- I think I got through the actual affidavit of Peter  
6 Harold Driver, I didn't get through the attachments to it.

7 MR. HYMAN: If you had gotten through the  
8 recitation and the arbitration award, I would have been very  
9 impressed, Your Honor. We certainly understand.

10 THE COURT: I flipped through it, but, again, not  
11 in a comprehensive way.

12 MR. HYMAN: Yeah. This is, Your Honor, a  
13 relatively simple case, from our perspective,  
14 notwithstanding the very complex facts that sit behind it.  
15 The Debtors -- or the Debtor, BSG Resources was placed into  
16 administration in March, 2018. For your benefit, Your  
17 Honor, if you haven't read them already, copies of the  
18 orders directing that administration, were attached as  
19 Exhibit A to our verified petition. The company is a  
20 relatively simple company at this point.

21 We do have attached, as Exhibit -- I believe it's  
22 Exhibit B to the verified petition, a relatively simple  
23 structure chart which shows majority-owned entities to the  
24 extent relevant in connection with the Debtor's capital  
25 structure. Would you like to take a second to flip to that

1 and we can go through that briefly?

2 THE COURT: I did take a look at that. Where is  
3 it -- where can I find it in the binder?

4 MR. HYMAN: That's in Tab 5. And I apologize that  
5 we don't have separate tabs for the exhibits, but it's just  
6 a few pages in.

7 THE COURT: Tab 5 in the first binder. All right.  
8 Is it in the actual verified -- are you talking about --

9 MR. HYMAN: Oh, yeah, Tab 5 which is the verified  
10 petition. And then we attached a simple structure chart at  
11 Exhibit B, which looks like it's --

12 THE COURT: So it's a little bit of a ways in?

13 MR. HYMAN: Yeah, I apologize.

14 THE COURT: No, it's all right. Got it.

15 MR. HYMAN: And we can just look at this in  
16 groups, generally. Let's -- we can start at BSG Resources  
17 which is the Debtor in this case. You'll see that Nysco  
18 Management Corporation is its parent and above that sits  
19 Balda Foundation.

20 It is BSG Resources Limited that commenced this  
21 Chapter 15. BSG Resources Limited, today, has very little  
22 in the way of operating assets. If you look to the left-  
23 hand side of that chart, you'll see an entity called Octea  
24 Limited.

25 THE COURT: All right.

1           MR. HYMAN: Octea Limited has a modest diamond  
2           mining activity. Their operations are located in the  
3           Republic of Sierra Leone. To this day, Octea Limited does  
4           not have the resources to funnel any money up to BSG  
5           Resources and while there is certainly a review, by the  
6           joint administrators, on how best to monetize that asset, at  
7           the moment it remains in its current state. The operations  
8           are being managed by its board of directors as well as a  
9           representative -- not a representative, an observer that was  
10          designated by the joint administrators.

11          THE COURT: All right.

12          MR. HYMAN: West African Power Limited was an  
13          entity pursuant to which the Debtor was engaged in some  
14          trading in energy-related matters in connection with the  
15          Federal Public of Nigeria. You'll note that that is a  
16          minority interest, ultimately, in the operating company in  
17          Nigeria. There continues to be, at this time, a dispute  
18          with its partner, the majority owner, regarding funding for  
19          the operations. And as we understand it, there is no  
20          revenues that are being generated out of that subsidiary.

21          BSG Resources (Guinea) Limited is where the action  
22          seems to be, Your Honor. So we'll come back to that in just  
23          one moment.

24          BSGR Holdings Cooperative, to the right, is an  
25          entity that the joint administrators are still

1 investigating. It may have some minority interests of  
2 nominal value, but to the extent that there is no plan to  
3 monetize those assets, to the extent that there is anything  
4 of material value to the estate -- to the estate, so to  
5 speak.

6 You'll notice, to the right, we have two dormant  
7 entities that are really irrelevant at that time -- at this  
8 time.

9 THE COURT: All right. So I guess you'll go back  
10 to BSG Resources (Guinea) Limited.

11 MR. HYMAN: So let's come back to Guinea. And to  
12 the extent that you had an opportunity to go through the  
13 declaration in any detail, you probably ferreted out a  
14 little bit of the story, so I don't want to provide an  
15 exhaustive history of where that stands today.

16 Let's start with the Debtor's cause of action in  
17 connection -- or against Soros and related entities, Willkie  
18 Farr's client in this case. The Debtors believe -- the  
19 Debtor believes, and the joint administrators believe that  
20 this contingent cause of action is likely the most valuable  
21 asset of the Debtor. It was commenced against George Soros  
22 and certain of those affiliates in the Southern District of  
23 New York. The complaint seeks damages in excess of \$10  
24 million -- \$10 billion, the proceeds of which, to the extent  
25 realized, could be used to satisfy all the obligations of

1 the Debtor.

2 The complaint alleges causes of action in the  
3 nature of tortious interference with contract, fraud,  
4 misrepresentation, defamation, among other things. Each is  
5 generally in connection with the revocation of the Debtor's  
6 and other mining rights in Guinea. We have the courtroom  
7 today Michael Lazaroff from Reed Smith, who represents the  
8 Debtor in connection with that action against George Soros  
9 and additional affiliates, to the extent that there are any  
10 detailed questions that Your Honor might have with respect  
11 to the underlying cause of action.

12 THE COURT: All right.

13 MR. HYMAN: It was a revocation of these valuable  
14 mining rights that was described in Mr. Cohen's declaration  
15 that really triggered all of this. As a result of the  
16 revocation by the Republic of Guinea, back in 2004, the  
17 Debtors commenced an arbitration proceeding against the  
18 Republic of Guinea, with the International Center For  
19 Investment Disputes. In connection with that arbitration the  
20 Debtor sought restitution of the mining rights, plus certain  
21 damages in connection therewith.

22 The revocation stemmed from a change in power in  
23 Guinea, after the Debtor, and certain of its affiliates, had  
24 received the mining rights in connection with the valuable -  
25 - a valuable lot. Among the Debtor's affiliates at that

1 time was a joint venture that the Debtor had with Vale S.A.,  
2 Cleary Gottlieb's clients here in the courtroom today.

3 The arbitration with Guinea continues, although it  
4 has been held in abeyance in some respects, since I guess it  
5 was late July of last year, as settlement discussions have  
6 continued in some regard. There has been a non-binding  
7 agreement that had been entered into, effectively a term  
8 sheet, that is not a binding agreement and it continues to  
9 be subject to discussion in a manner in which, perhaps,  
10 could monetize this asset or these rights in favor of the  
11 Debtor where today they have very little.

12 In connection with that revocation, Vale commenced  
13 an arbitration in the London Court of International  
14 Arbitration, also, I believe, it was in 2014. That  
15 arbitration has recently included -- has recently concluded  
16 with an award in favor of Vale in excess -- in excess of  
17 \$1.2 billion plus additional pre-award and post-award  
18 interests which could very easily bring the total amount of  
19 the award in excess of \$2 billion.

20 Since the issuance of the award on April 4th a  
21 number of things have happened. On April 23rd Vale filed a  
22 petition for recognition and enforcement of the award in the  
23 Southern District of New York. That is really the reason  
24 that we're here today, Your Honor. They seek entry of a  
25 judgment in the amount of the award, plus additional

1 interests, and costs. The entry of such a judgment would  
2 perhaps allow Vale to exercise rights and remedies with  
3 respect to its claim, or with respect to its judgment, in  
4 the United States. The Debtors believe, and joint  
5 administrator believes, that the only true asset in the  
6 United States is its contingent rights in the litigation  
7 claims that it has against George Soros and his affiliates.

8 In England, on May 9th, Vale obtained an order to  
9 enforce its award with the English High Court of Justice.  
10 The next day, on May 10th, the Debtor filed a timely  
11 challenge to the award, similarly, with the High Court in  
12 Justice and thereafter, on May 23rd, the Debtor filed an  
13 application to set aside the May 9th enforcement order. We  
14 have been advised, by counsel in England, that the effect of  
15 that set aside motion is that Vale is now stayed from any  
16 enforcement action in England, pending final determination  
17 of the application. It's uncertain as to when that will  
18 come to pass.

19 This, however, would not stop Vale from exercising  
20 rights and remedies, perhaps in entering and obtaining the  
21 judgment in the United States, absent action in the U.S.  
22 And that is the reason, ultimately, for the Chapter 15  
23 filing, Your Honor. The Chapter 15 filing was made  
24 yesterday and we sought an expedited hearing on a TRO, Your  
25 Honor, because today happens to also be the last day by



1       which the Debtor has to file a response in connection with  
2       Vale's petition for recognition of the arbitration award in  
3       the United States in order to, perhaps, continue the clock  
4       and create additional proceedings and perhaps have an  
5       opportunity for further review.

6               THE COURT:   And that response would be in the case  
7       in the Southern District of New York?

8               MR. HYMAN:   That's correct, Your Honor.

9               THE COURT:   And what judge has that case?

10              MS. SCHWEITZER:   Your Honor, it's Judge Broderick.

11              THE COURT:   Thank you.

12              MR. HYMAN:   Thank you very much.

13              THE COURT:   It doesn't really matter, but actually  
14       it's just --

15              MS. SCHWEITZER:   No, just to know.

16              THE COURT:   -- the kind of detail that helps me  
17       remember some of these things, so --

18              MR. HYMAN:   Yeah, we appreciate that, Your Honor  
19       and thank you very much.

20              So we come here today, Your Honor, to protect what  
21       the joint administrators believe is perhaps the best  
22       opportunity for these Debtors to reorganize -- or this  
23       Debtor to --

24              THE COURT:   Well, let me just ask, why would the -  
25       - this request stay your obligation to file a response in

1 front of Judge Broderick? I understand how it would -- is --  
2 - because you think that that case is sort of, at its core,  
3 an effort at collection?

4 MR. HYMAN: It is a difficult standard to  
5 overcome, I believe that we are intending to file, we're  
6 certainly preparing papers and the expectation today is that  
7 we will make a filing at the end of the day. What we would  
8 like, in terms of a TRO, though, is to be able to submit  
9 something in connection with that action to at least delay  
10 further proceedings going forward so that the Debtors could  
11 save necessary resources, again, there is very little cash  
12 flow here, and perhaps put that off for a period of time  
13 while there is some determination that's ultimately made in  
14 connection with the underlying arbitration contestation in  
15 England.

16 THE COURT: Right. Well, I mean sometime what  
17 courts do for something like that is, say, you can do  
18 various things in that proceeding, I'm not going to weigh in  
19 on that, short of executing on assets, right? So -- but you  
20 anticipate filing that response today, it sounds like?

21 MR. HYMAN: It is, Your Honor. We do. It's  
22 unclear what the reaction is going to be from the court. We  
23 believe that it was going to schedule a subsequent hearing  
24 and the court will consider our motion for -- to revisit the  
25 matter.

1 THE COURT: What do you mean "the reaction from  
2 court"? It's probably pursuant to some scheduling order in  
3 that court, right?

4 MR. HYMAN: Yeah, is -- there may be -- I think  
5 that there is a scheduling order in that court.

6 MR. BLACKMAN: Your Honor, Jonathan Blackman.  
7 I've been involved in the arbitration and the subsequent  
8 litigation from the outset, so I think I have the pleasure,  
9 dubious though it may be, of having the greatest exposure to  
10 this.

11 In the U.S. case Judge Broderick has the case.  
12 Their answer is due today. We would have a period of time,  
13 I guess until June 18th, to file a reply. At that point the  
14 judge will decide how to proceed, whether to have a hearing,  
15 whether to allow further briefing, et cetera. The important  
16 thing is, and I think counsel is conceded it, nothing  
17 detrimental to the estate is going to happen today or indeed  
18 when we file a reply. And nothing is going to happen, of  
19 consequence, until Judge Broderick actually rules on our  
20 application, which is simply an application to have the  
21 award recognized here. It's not an execution attempt, it's  
22 not an attachment attempt, it's not an attempt to seize  
23 assets --

24 THE COURT: Right. It's another --

25 MR. BLACKMAN: -- or anything like that.

1 THE COURT: -- it's a step forward, though, in  
2 terms of -- let me back up. The recognition would be a step  
3 forward but the filing itself is part of a judicial process.

4 MR. BLACKMAN: That's correct.

5 THE COURT: All right. Thank you.

6 MR. HYMAN: Your Honor --

7 THE COURT: The reason why I mention it is  
8 because, obviously, when there's another proceeding pending  
9 in federal court where there's a briefing deadline today,  
10 there's always a concern that a judge like myself would have  
11 about sticking my nose in the middle of that, without me  
12 having gone to that court with some sort of explanation as  
13 to why you're not -- I don't know how the deadlines were  
14 set, I assume there's some sort of court order setting the  
15 deadlines.

16 MR. HYMAN: Your Honor, we didn't -- nobody from  
17 the joint administrators or the Debtor have participated in  
18 that matter to date. So anything --

19 THE COURT: Well, but if there's a court order and  
20 you're -- so I don't know what that means. I mean, by  
21 filing here I don't think there's any ability to say that  
22 there's no jurisdiction over in that just up the street,  
23 right? So that would mean that you're in a case that that  
24 judge entered a scheduling order for whoever's request, so  
25 it is what it is, what it is, right? So --

1 MR. HYMAN: Okay. I think there was some concern  
2 on our part that regardless of whether the motion was filed  
3 or not, based on what the response ultimately turns out to  
4 be, that there could be an entry of a judgment at --

5 THE COURT: That -- I'm sorry, there could be  
6 what?

7 MR. HYMAN: That there could be an entry of a  
8 judgment at any time without any further opportunity to  
9 revisit.

10 THE COURT: Was there any thought given to filing  
11 a motion for a stay in that case?

12 MR. HYMAN: It's something that we could consider,  
13 but no, we have not done it to date.

14 THE COURT: All right.

15 MR. HYMAN: Certainly, Your Honor, you know, I had  
16 mentioned before that there is no operating revenue that is  
17 coming up to this Debtor. This Debtor is being funded by  
18 outside parties to the most part on tenuous terms. The  
19 action -- the Soros action is being funded by an entity  
20 called Litigation Solutions Limited, which has agreed to  
21 fund certain of the costs and expenses of that litigation.  
22 Certainly they would entitled to secured interest, a debt of  
23 secured interest in any proceedings arising out of the  
24 ultimate judgment. That funding obligation may be  
25 terminated on 30 days' -- on 30 business days' notice. Of

1       utmost concern to the Debtors, Your Honor, is that adverse  
2       judgment in connection with the Southern District of New  
3       York recognition proceeding would have, or could have a  
4       detrimental impact on our ability to continue to get funds  
5       through that litigation funding source.

6               In the event that there was a termination or a  
7       determination by that funder to discontinue funding the  
8       costs and expenses of that Soros litigation, that would have  
9       a detrimental effect on the Debtor and, presumably, leave  
10      the Debtor without an opportunity to continue to pursue what  
11      is it's most -- what it believes to be its most valuable  
12      asset in these cases.

13             MS. SCHWEITZER: Your Honor, if I may?

14             THE COURT: Briefly.

15             MS. SCHWEITZER: I recognize -- I will allow him  
16      to proceed with his entire presentation, and I will try to  
17      reserve my comments. Everything he has just said about  
18      litigation funding and the contingencies and the effect on  
19      the TRO is nowhere in the motion papers or the record. And  
20      we do not have access to those litigation agreements. So I  
21      can address that in my -- when I speak in opposition, but I  
22      would ask that we at least be, in our arguments, constrained  
23      that the motion forward to the evidence is actually before  
24      the Court.

25             MR. HYMAN: Okay. I did, Your Honor. Certainly

1 the reference to Litigation Solutions funding is in the  
2 declaration of Malcolm Cohen.

3 THE COURT: So what does that mean, in terms of  
4 you say that there -- this is an asset of the Debtor, but  
5 its a pledged asset. So who benefits from the lawsuit?

6 MR. HYMAN: The Debtor would certainly benefit  
7 from the lawsuit, above any costs and expenses that had been  
8 funded by litigation funding. Right? It may be --

9 THE COURT: What's their security interest? Is  
10 their limited to the amount they funded at --

11 MR. HYMAN: It's the commercial --

12 THE COURT: -- I mean, they obviously have a  
13 profit model, so how do they make their money? So I'm --

14 MR. HYMAN: Presumably it's their commercial --  
15 it's a commercial tort claim. Right? The proceeds,  
16 ultimately, from any settlement or judgment.

17 THE COURT: No, no, I understand that. But I'm  
18 trying to figure out the extent of their lien. So  
19 certainly, if they funded you a hundred dollars, they're not  
20 simply asking to get back a hundred dollars, because you  
21 don't make any money with that. So certainly their rights  
22 are more valuable than that. So what are their rights as --  
23 in terms of the secured interest in the proceeds?

24 MR. HYMAN: Yeah, I would have to go back and take  
25 a look at that, Your Honor. I don't know that we have all

1 of that --

2 THE COURT: Because, I mean --

3 MR. HYMAN: Yep.

4 THE COURT: -- they could say you get five percent  
5 and we get everything else. I don't know what that is,  
6 because it does raise a question as to whose benefit --  
7 whose asset it really is if it's pledged. So -- but it  
8 doesn't sound like we have a particular robust record on any  
9 of this, so let's not get bogged down in it. But that --  
10 the extent of the Debtor's interest in that, if you have a  
11 litigation funder, certainly is something we'll eventually,  
12 I assume, get to.

13 All right. So what else would you like to tell  
14 me?

15 MR. HYMAN: Your Honor, I recognize that we do not  
16 have the declarant in the court today.

17 THE COURT: Yeah, again, I think I got a call  
18 saying can we have the declarant participate by phone, and I  
19 think I asked my chambers to say what I usually say, which  
20 is sort of caveat emptor. I don't really know what's going  
21 to walk into court and what it means or doesn't mean to have  
22 somebody here, you all do. And so I can't take evidence by  
23 phone. And so I have what I have today. I certainly have  
24 no objection to somebody listening in, but I -- taking  
25 evidence by phone is not something we do here, so I guess



1       that's -- we are where we are for purposes of today.

2               MR. HYMAN:   Okay, Your Honor.   From our  
3       perspective, I think that what we would hope to accomplish  
4       today is get a short bridging order to sometime next week or  
5       in the very near future to have a robust hearing on the TRO,  
6       which would take us through a recognition hearing on or  
7       about July 10th, as Your Honor suggested.

8               THE COURT:   But what would you want the TRO to  
9       say?

10              MR. HYMAN:   Your Honor, I think that what we would  
11       want the TRO to say is that parties are effectively subject  
12       to what otherwise would be the automatic stay for purposes  
13       of --

14              THE COURT:   Well, but let's be --

15              MR. HYMAN:   -- of that interim period.

16              THE COURT:   -- more specific, though, because we  
17       have the case in SDNY.   Are you asking me to say -- to tell  
18       that court it can't proceed and therefore you don't have to  
19       file a brief, that's otherwise due today?

20              MR. HYMAN:   We do intend to file the brief today.  
21       So --

22              THE COURT:   All right.   So you're not asking for  
23       that relief.   So what are you asking for in connection with  
24       that proceeding?

25              MR. HYMAN:   We would ask that the proceeding at

1     that point then stall for some period of time, subject to  
2     our ability to come back to this Court and have a fulsome  
3     hearing, with evidence, on the TRO in an effort to provide  
4     this Court the justification that we can go forward and that  
5     there should be no judgment entered in connection with that  
6     proceeding. And that Vale should be restricted from  
7     exercising any rights and remedies that it may have. We  
8     think that is the comfort that we could provide to the  
9     funders, the litigation funders, that could perhaps allow  
10    this to continue to --

11           THE COURT: So where's the reference to the  
12    litigation funders in the papers? I remember seeing  
13    something, but I don't remember it being particularly  
14    detailed.

15           MR. HYMAN: It's certainly not fulsome, Your  
16    Honor, but it was contained in Paragraph 31.

17           THE COURT: All right. I guess I was -- I'm a  
18    little confused, because I was looking at Paragraph 30 that  
19    says, "The (indiscernible) claim is docketed in the district  
20    court as BSG Resources Limited vs. Soros. The Soros claim,  
21    including discoveries presently stayed pending the outcome  
22    of the ICSID proceeding, and a status conference is  
23    scheduled in the district court on July 18th serving the  
24    next step in the litigation," which -- so I took from that  
25    paragraph a strikingly different understanding of the

1 district court proceeding than what you just told me. It  
2 would seem to say that there's a briefing schedule and you  
3 think, absent some relief, something could happen and your  
4 rights could be affected tomorrow.

5 MR. HYMAN: I think we're talking about the --  
6 different litigations. The Soros claim is the Debtor's  
7 claim against George Soros and his affiliates. The claim  
8 that we were talking about in connection with the briefing  
9 was not the claim, it was Vale's petition to have the  
10 arbitration award --

11 THE COURT: But what would be --

12 MR. HYMAN: -- recognized here.

13 THE COURT: -- what else is there to do with the  
14 Soros claim, other than to get it enforced here in the U.S.?

15 MR. HYMAN: We would -- yeah, the stay would have  
16 nothing to do with the Soros claim, the stay -- the Soros  
17 claim would continue to be pursued. That's, again, when the  
18 joint administrators see significant value in this estate.  
19 It is that pursuit of the Soros claim that is funded by  
20 Litigation Solutions.

21 The concern that we have had is that Litigation  
22 Solutions, to the extent that there is some concern about  
23 interference with the litigation --

24 THE COURT: So what is it that's stayed?

25 MR. HYMAN: Oh, I apologize, Your Honor.

1 THE COURT: Because it says, "The Soros claim,  
2 including discoveries presently stayed."

3 MR. HYMAN: Yes.

4 THE COURT: So what is it that's stayed?

5 MR. HYMAN: They are at the motion to dismiss  
6 stage in connection with the Soros claim. The district  
7 court stayed the action pending resolution of the Guinean  
8 arbitration. The arbitration in the Republic of Guinea has  
9 gotten to the stage where they are involved in settlement  
10 discussions. The settlement conference that's scheduled for  
11 the end of July in the Soros claim will be an opportunity to  
12 -- for the parties to address, in front of the judge,  
13 restarting discovery, to the extent that that's something  
14 that is of interest to everybody.

15 THE COURT: So what -- where is the term "Soros  
16 claim" -- so that's defined, I guess, in Paragraph 28?

17 MR. HYMAN: Yes, that -- the Soros claim is what I  
18 referred to earlier as the cause of action that was  
19 commenced in the Southern District of New York seeking  
20 damages in excess of \$10 billion.

21 THE COURT: All right. So all there is about the  
22 action that you really want the stay of is Paragraph 26  
23 saying it's docketed and they're seeking recognition?

24 MR. HYMAN: That's correct, Your Honor.

25 THE COURT: All right. So --

1           MR. HYMAN: The Soros claim is an asset of the  
2           estate, not a liability.

3           THE COURT: All right. Right. All right. No,  
4           I'm looking at it from district court proceedings, trying to  
5           understand what's where, what relief you're asking for. So  
6           when you're describing the briefing schedule that requires  
7           you to file a brief today, and your concern about that case  
8           moving forward, you're talking about the district court  
9           action in Paragraph 26.

10          MR. HYMAN: Indeed, Your Honor.

11          THE COURT: And so that really would be additional  
12          texts, in a perfect world that would be in Paragraph 26,  
13          because I don't think I had that information that you just  
14          gave me until today, until just today's hearing.

15          MR. HYMAN: I'm not sure I follow.

16          THE COURT: Meaning, I don't think in the papers  
17          it's identified that you have an obligation to file a brief  
18          today in that district court proceeding discussed in  
19          Paragraph 26, and that that's the proceeding that you want  
20          the stay of because you think it could, conceivably, result  
21          in the -- entering an order -- entering a judgment of the  
22          arbitration?

23          MR. HYMAN: Yes. As you say that, Your Honor, it  
24          certainly could have been clearer, but that's correct.

25          THE COURT: All right. What else do you want to

1 tell me?

2 MR. HYMAN: I think that, you know, we believe  
3 that we meet the merits -- we meet the standards for entry  
4 of a temporary restraining order. I recognize, of course,  
5 that we do need to get additional evidence in, or evidence  
6 in, and allow parties an opportunity to cross examine.

7 THE COURT: Well, that's why I asked, because I  
8 don't think the statements you made here I have any evidence  
9 for. That's where I'm trying to sort of tether things to  
10 various parts of the declaration, because I think I just  
11 have the existence of the judgment. But -- I'm sorry, the  
12 existence of the -- of that particular 2019 district court  
13 proceeding. But for irreparable harm the notion would be --  
14 explain what the status is of that proceeding such that  
15 there's a need for some sort of stay, otherwise irreparable  
16 harm would occur. I think I just had the existence of the  
17 proceeding as a matter of evidence, in Paragraph 26.

18 MR. HYMAN: I appreciate that, Your Honor. You  
19 know, I think that counsel has acknowledged the time line on  
20 -- for Cleary. I think it's -- I do not have evidence in  
21 the declaration of the timing of service and therefore the  
22 triggering of the answer period.

23 THE COURT: Well, I don't mean service, I mean  
24 that there's a -- in your view that there's a pending  
25 potential event that could occur in that case that would

1 result in irreparable harm.

2 MR. HYMAN: That was -- and the date was triggered  
3 off of the service of BSG in Guernsey, and that's the  
4 service that I was referring to.

5 THE COURT: All right. Anything else that you  
6 would like to tell me about?

7 MR. HYMAN: I would just reserve an opportunity to  
8 respond.

9 THE COURT: All right.

10 MR. HYMAN: Thank you.

11 THE COURT: Thank you.

12 Please, counsel.

13 MS. SCHWEITZER: Thank you, Your Honor. For the  
14 record, Lisa Schweitzer from Cleary Gottlieb, representing  
15 Vale.

16 I think that the one thing, probably the only  
17 thing that we agree on with Debtor's counsel, which has been  
18 said today, which is that this seems simple, but it's very  
19 complex in fact.

20 And the joint administrators have filed this  
21 Chapter 15 case and they, unsurprisingly, seek to portray it  
22 as a plain vanilla recognition proceeding to further valid  
23 Guernsey administration proceeding, they've got a joint  
24 administrator, they've got all this, and it's just simply  
25 not the case this is straightforward.

1           And if you'll indulge me in walking through a  
2       little of the history, I will try to stay to the facts that  
3       are in front of Your Honor and facts that are not in dispute  
4       and to take the issues in turn. As I previewed for Your  
5       Honor, Vale thinks that this Chapter 15 is flat out being  
6       brought in bad faith and to further evade the prosecution of  
7       the arbitral award, and to further the Debtor's history of  
8       holding on to assets and secreting assets. And, as we'll go  
9       into along the way, that there's a lot of reference to the  
10      corporations here, there's not a reference to the ultimate  
11      owners of the corporation, which is a man named, and I  
12      apologize if I get his name wrong, but I believe it's Benny  
13      --

14           MR. BLACKMAN: Steinmetz.

15           MS. SCHWEITZER: -- Steinmetz. And he is, and his  
16      family are the ultimate beneficiaries of the trust that sits  
17      on top of the org chart. That's nowhere in the record, and  
18      the corporate ownership disclosures, the 10 percent  
19      ownership disclosures actually stop at the foundation level  
20      so that is one of many things that this application raises  
21      questions about. To --

22           THE COURT: So let me -- I'll certainly let you  
23      sort of lay it out, but towards the end what I'd appreciate  
24      is your road map for today and further proceedings. In  
25      particular, if they're going to file a brief today in the



1 district court proceeding, and there are other things to do  
2 in the district court proceeding, whether there's some sort  
3 of ability to have kind of an interim agreement where people  
4 can do what they need to do, but they don't -- they allow me  
5 a chance to sort through some things. But again, I'll give  
6 you a chance to sort of walk through the history.

7 MS. SCHWEITZER: Of course, Your Honor. Again, I  
8 always promise to try to tell you where I'm going, so I'll  
9 tell you where I'm going, and then I will tell you how I'll  
10 get there.

11 We, first with respect to the recognition hearing  
12 itself, as I indicated, we do intend to object to this as a  
13 recognized foreign main proceeding. And in furtherance of  
14 that we do intend to serve discovery and we don't have to do  
15 it in the courtroom today, but we recognize that that  
16 discovery will need to be expeditious and according to a  
17 tight schedule, or an efficient schedule, such that we can  
18 complete that by July 10th. We would not be inclined to ask  
19 for a later hearing because, again, we think these issues  
20 should be brought forward, not later.

21 But with respect to that first issue of putting a  
22 marker on the calendar, July 10th or there, you know, as a  
23 start to that hearing would be fine.

24 With respect to the TRO, we share the concerns  
25 that Your Honor shares, both in terms of -- and we -- I'll

1 make the case, rather than rely on the questions you've  
2 thrown out. But we do share the concerns that the TRO order  
3 simply now said -- I believe he had just misspoken. I think  
4 he's looking for a TRO pending a preliminary injunction  
5 hearing and then a preliminary injunction under the  
6 application is proposed to extend until the final hearing.  
7 And the papers, the TRO papers just says the application is  
8 granted. But when you look under that, the relief being  
9 sought is against the stay of -- against execution of assets  
10 against the Debtors, you know, a heightened standard. And  
11 then also, a bring forward or a gap fill, people have  
12 different names for it, of 362, that you just get,  
13 basically, the automatic stay in its entirety today. So  
14 that was the application put before you. And I believe that  
15 that is -- we could go through the order again, but that is  
16 what he is asking for.

17 We do not believe that that TRO should be, at all,  
18 applicable to the Vale Southern District proceeding, both  
19 because of a failure for them to even making the showings or  
20 put in evidence that's relevant. Second, they don't even  
21 argue, in their motion, or application, that that filing  
22 deadline today is the irreparable injury that they're  
23 concerned about. In fact, they don't mention today's filing  
24 deadline anywhere in any paper that's been submitted before  
25 Your Honor. But more importantly, we don't think that

1 that's consistent with the law on why you get TROs prior to  
2 the recognition of your case, so I'll go through that.

3 On the sealing motion --

4 THE COURT: Well, one of the things I'm interested  
5 in, again, we learn these cases as we go.

6 MS. SCHWEITZER: Yeah.

7 THE COURT: I've got -- there's a judge who has a  
8 proceeding up the street and depending on what the schedule  
9 is with that, it is often preferable to try to work out a  
10 practical solution if, in fact, people think but haven't  
11 memorialized the notion that nothing's going to happen in  
12 that case between now and whenever we might get together  
13 here to discuss things, that will actually result in any  
14 irreparable harm to the Debtor in terms of the seizing of  
15 assets. There may be a way to avoid fighting about that  
16 particular point today and so that I can get papers from you  
17 all and anybody else who's interested and then consider this  
18 on a more fulsome record.

19 So I'm just trying to think of practical  
20 solutions. I don't think filing a brief, which frankly  
21 there's no explanation of what it is that wants to be stayed  
22 in connection with that particular case, and certainly  
23 filing a brief which clearly has already been drafted,  
24 because folks are ready to file it today, it's already 3:15,  
25 so I assume it is drafted, doesn't seem to present any --

1 doesn't seem to be a basis for me granting a TRO where no  
2 one has filed any request to stay those proceedings. And so  
3 there seems to be an element of tactics to that that I don't  
4 want to get in the middle of.

5 But my question is, whether as a practical matter,  
6 whatever the next step are in that litigation, if there is a  
7 way for people to agree and to inform this Court and that  
8 court to say, we've worked out the schedule so that we're --  
9 this is what we're teeing up, and this is where we're teeing  
10 it up, and that there won't be any issues that are going to  
11 implicate concerns about execution of assets in the  
12 meantime, because frankly we weren't ready to get to that  
13 part of the program, that may be a practical solution to at  
14 least today's problem. So --

15 MS. SCHWEITZER: So, Your Honor, I completely  
16 agree with what you said, and just to address that, in part  
17 just to make sure the record is clear, is that the original  
18 TRO motion is a broad motion for all sorts of stays. We  
19 hear the Debtor's articulate a concern, not in the record,  
20 is a filing deadline today or that that proceeding goes  
21 beyond today. They said, I'm going to file today, it's the  
22 concerns that go beyond today.

23 My understanding is a motion is not due today with  
24 -- the deadline today is for them to answer the petition for  
25 recognition. I do not purport to be a recognition expert

1 and I would not impose on you to be, either.

2 THE COURT: But it's the equivalent of an answer.

3 MS. SCHWEITZER: So it's an answer -- they say  
4 they're filing a motion, I reserve all rights --

5 THE COURT: As Judge Bryant said, an answer is the  
6 most useless piece of paper in a litigation. And while that  
7 --

8 MS. SCHWEITZER: It's --

9 THE COURT: -- may vary somewhat from case to case  
10 --

11 MS. SCHWEITZER: Yes.

12 MR. BLACKMAN: Your Honor, I am a "recognition  
13 expert" and arbitration. The way it works in arbitration,  
14 under the Federal Arbitration Act is you start a proceeding  
15 by what's called the petition.

16 THE COURT: Petition.

17 MR. BLACKMAN: The petition is like a complaint,  
18 but it's also a brief. You actually file something which  
19 doesn't really recite facts, it gives you the legal  
20 arguments. What they're going to file this afternoon, I  
21 assume, is the response to that, which will be a brief  
22 setting forth their defenses, under the New York Convention,  
23 as to why this award should not be recognized. You even get  
24 a reply, which I mentioned I think due on the 10th, which  
25 will be a reply brief. After that it's up to Judge

1 Broderick what he wants to do, but the clear thing is he's  
2 not going to do anything before July 10. He's not going to  
3 enter into any judgments or do anything like that. He will  
4 have a fully briefed motion, he'll decide what to do with  
5 it. And if, by some miracle, he were to grant it, we'd be  
6 back before you before the date of execution or anything  
7 like that. So the short answer is, we're just dealing with  
8 briefing now. That's the only thing that's happening in the  
9 New York recognition proceeding.

10 THE COURT: All right.

11 MS. SCHWEITZER: And so on that -- and Debtor's  
12 counsel had made references, and again I don't want to  
13 litigate collateral issues, they're saying they might be  
14 seeking stay, or adjournments, or have other relief being  
15 sought there, that's not what we're aware of is the  
16 deadline. That is not something we're asking you to resolve  
17 or opine on today.

18 THE COURT: Well, I -- so just to cut to the  
19 chase, I know we're having an ongoing discussion, but you're  
20 trying to do this as official as possible. I need a record.  
21 Right? So that's why I was spending time trying to anchor  
22 various things to various parts of the declaration. That's  
23 the way it works. And while a TRO -- while irreparable harm  
24 is the biggest factor for courts to consider for a TRO, it's  
25 not the only factor. And certainly a preliminary

1 injunction, which is often combined with a hearing on the  
2 merits, sort of goes through the whole thing and you need a  
3 record to establish various things which may or may not be  
4 relevant to things like bonds and other -- all sorts of  
5 other issues.

6 So what I hear articulated -- the motion doesn't  
7 articulate much. Usually when people come in they tell me,  
8 we have this asset, this is the -- so Alitalia came in and  
9 said, we have planes, and they fly through JFK, and if we  
10 don't have some interim relief there's a possibility  
11 somebody may self-help, notwithstanding our Italian  
12 proceedings and try to seize those planes. That's sort of a  
13 very straightforward thing, and I just mentioned sort of the  
14 level set.

15 Here, I understand the asset is this  
16 litigation right, this Soros claim. The Soros claim  
17 proceedings, which are, I guess, 2017 District Court action,  
18 is essentially stayed, and there's some details about that.

19 The other thing relating to that -- well, not  
20 relating to that -- separate from that is that you've got  
21 this arbitration. This is the \$1.2 billion. This, I guess,  
22 is a concern that this will go forward and mature during the  
23 course of the Chapter 15, absent some release. That's what  
24 I understand is really the request that's being made is to  
25 say we don't want that to happen.

1 I don't have a lot on the record here other than  
2 the existence of this 2019 District Court action. But what  
3 people seem to be telling me, and it doesn't seem to be  
4 disputed, which sort of fills in the picture for both sides,  
5 is what the briefing schedule is for that. And that doesn't  
6 seem to be anything where there's any peril to anyone  
7 between now and July 10th.

8 I suppose the first peril could be July 11th at  
9 12:01 AM, if Judge Broderick was sitting in his chambers and  
10 thought that that would be the first thing he wanted to get  
11 off his to do list on that particular day. Procedurally,  
12 that is something he could do. But that does -- since today  
13 is June 4th, that does give us some time to figure out which  
14 end is up for pieces of the Chapter 15. And if everybody  
15 understands that that's how it's going to work and we sort  
16 of address than on the record, that may be something that  
17 allows us to conduct other briefing and figure out what, if  
18 any, relief would be appropriate between now and any date of  
19 recognition.

20 MR. HYMAN: I was going to say, Your Honor, that  
21 you've really cut to the chase. And I think that you really  
22 do understand what the concern of this Chapter 15 Debtor is.  
23 It's really the adverse consequences from the entry of an  
24 award acknowledging the arbitration award in the U.K.

25 THE COURT: But I think everyone agrees that such



1 an award would not take place before -- until after the  
2 replies filed. And so, there's no intent, and I haven't  
3 heard any, to do something out of regular order where Vale  
4 would say, well, we're not going to file a reply, we'll file  
5 a letter. As soon you file your thing saying, Judge, we  
6 don't need a reply, we unilaterally win.

7 So, essentially, I'll take the representations in  
8 front of me to mean that there is no potential for any entry  
9 of a judgment recognizing the arbitration award before the  
10 briefing is completed on July 10th, and therefore, we can  
11 all at least not worry about that issue for purposes of  
12 today's proceeding.

13 MR. HYMAN: I think, Your Honor, if we could get  
14 that representation from Cleary Gottlieb, that would --

15 THE COURT: I think I did, but --

16 MR. HYMAN: -- that would go --

17 THE COURT: -- but --

18 MR. HYMAN: -- that would a long --

19 THE COURT: -- but --

20 MR. HYMAN: -- that would go a long way to allay  
21 our concerns.

22 THE COURT: I think I just did, but --

23 MR. BLACKMAN: Yeah, just to make it clear -- and  
24 I may have gotten my dates a little middle -- our reply  
25 brief would be due on June 18th.

1 THE COURT: June 18th. All right, so that's a  
2 different date. Okay.

3 MR. BLACKMAN: And the Soros case, just again so  
4 the record is clear, has been stayed for a year. The next  
5 hearing on that is July 18. So, in between that, you're  
6 going to have our hearing --

7 THE COURT: Right.

8 MR. BLACKMAN: -- on July 10th. And --

9 MS. SCHWEITZER: No.

10 MR. BLACKMAN: No --

11 MS. SCHWEITZER: Well, the June 18th --

12 THE COURT: No. So, June 18th --

13 MR. BLACKMAN: No. In between June 18 and July --  
14 there are two separate proceedings.

15 THE COURT: So, that means that there's two weeks.

16 MS. SCHWEITZER: So --

17 THE COURT: That changes the calculus. I'm trying  
18 -- so here's what I'm trying to do. And I may ask folks to  
19 work backwards on this rather than think about... I mean, I  
20 have a fairly sketchy record. So, but rather than correct  
21 litigation mischief for people, regardless of whether you  
22 win or lose, my thought would be to try to work out a  
23 schedule here to deal with any requests for injunctive  
24 relief after today, with an understanding that perhaps  
25 you're going to -- you could memorialize with this Court and

1 with the District Court that you're not asking for any entry  
2 of a judgment, recognize the arbitration award before X  
3 date, so we could essentially deal with our briefing.

4 I'm not going to ask you for that date now. I'll  
5 give you a few minutes to chat and see what you can live  
6 with; chat with clients, chat with each other. I don't want  
7 to do anything that's going to add another litigation issue  
8 to address. And June 18th is a little --

9 MS. SCHWEITZER: I'm sorry.

10 THE COURT: That's all right. The reason why I  
11 mentioned it's June 18th, which is two weeks from now, I'm  
12 around next week. I'm supposed to be camping on an island  
13 in Lake George on the week of June 17th.

14 MR. HYMAN: Oh, we're jealous.

15 THE COURT: That has not meant in the past that  
16 I'm unreachable for business.

17

18 MR. HYMAN: No, that's all right --

19 THE COURT: So, what I'd like to do is give you a  
20 few moments in a little bit to talk about scheduling and  
21 maybe you have a way to handle it. There are times when  
22 essentially folks can give away ice in the winter and say,  
23 we're fine, we don't think anything's going to happen by  
24 this date but we're happy to put it on the record and let  
25 everybody sort of tee up the issues that need to be teed up.

1 MS. SCHWEITZER: I heard everything you said. But  
2 because I'm a mom, I actually can like talk with -- you  
3 know, and listen and --

4 THE COURT: That means you probably could throw in  
5 a few more participants.

6 MS. SCHWEITZER: There you go. I think someone  
7 was talking behind me that -- I have a proposal, if I may.

8 THE COURT: Sure. All right.

9 MS. SCHWEITZER: So, as I understand it -- and I  
10 just want the record to be clear because people are saying  
11 different things -- is that today the deadline is this  
12 response to the petition.

13 THE COURT: Right.

14 MS. SCHWEITZER: And Debtors' counsel is  
15 representing they are filing --

16 THE COURT: Right.

17 MS. SCHWEITZER: -- a response --

18 THE COURT: Yes.

19 MS. SCHWEITZER: -- to the petition; nothing  
20 different. Our reply is due --

21 MR. BLACKMAN: June 18th.

22 MS. SCHWEITZER: -- June 18th. And we would  
23 propose that if they will file their response today, we will  
24 file our reply on June 18th. And assuming we are proceeding  
25 with that schedule and everyone's in agreement with that, we

1 would be prepared to ask -- or to tell that court, ask that  
2 court -- however we phrase it -- that they don't issue a  
3 ruling judgment --

4 THE COURT: Right.

5 MS. SCHWEITZER: -- before July 10th or 11th.

6 THE COURT: All right.

7 MS. SCHWEITZER: Right? So, if that would work.

8 And then if it's not that and there needs to be preliminary  
9 relief, we are prepared to do so, but we would want  
10 discovery on these different points that -- you know, these  
11 arguments we're hearing about agreements and all these other  
12 things.

13 MR. HYMAN: We understand that, Your Honor. I  
14 think that we're just trying to confirm with our arbitration  
15 expert, who's not in the courtroom today, that we're talking  
16 about the right things and the paper is going to be filed  
17 today. I don't know that it's called an answer or a  
18 response.

19 MR. BLACKMAN: It's called -- it's an "answer"  
20 but because, as I said, under the Arbitration Act, a  
21 petition to confirm is treated like a motion, it's  
22 essentially an opposition brief.

23 THE COURT: Right.

24 MR. BLACKMAN: It'll set forth -- there are legal  
25 grounds and factual grounds opposing the recognition of the

1       award, and we will reply on the 18th with why their grounds  
2       don't work, et cetera, and the judge will then decide. And  
3       the only wrinkle in that is that we just, I think, agreed  
4       that we will tell the judge, don't do that --

5               THE COURT: Please don't do that. Yeah.

6               MR. BLACKMAN: -- don't rule on that until you've  
7       heard us on the 10th of July.

8               THE COURT: Right.

9               MR. BLACKMAN: And that's simple and  
10      straightforward.

11              THE COURT: Right. And right, we're trying to be  
12      solicitous of different court processes without adding that  
13      to our list of litigation items to duke it out. Right.

14              MR. HYMAN: Your Honor, I think that would save a  
15      lot of cost and expense for both parties. Resources are  
16      precious for us. So, that seems to be a solution that would  
17      work.

18              MS. SCHWEITZER: Okay. And just so we're clear,  
19      because we like solutions, is that we understand then there  
20      is no request for pre-recognition injunctive relief at all.  
21      That motion is withdrawn.

22              MR. HYMAN: I think this --

23              MS. SCHWEITZER: Or that's resolved. Yes.

24              MR. HYMAN: This solution resolves that and --

25              MS. SCHWEITZER: Okay.

1 MR. HYMAN: -- again, I think it saves significant  
2 cost and expense.

3 MS. SCHWEITZER: Okay.

4 MR. HYMAN: -- and perhaps save a trip to the  
5 United States for one of our joint administrators.

6 MS. SCHWEITZER: Okay. It's a lovely time to be  
7 in the U.S. So, well done. We can agree on things.

8 THE COURT: Well, thank you. I appreciate that.  
9 Again, because regardless of how people fare if I  
10 (indiscernible) as a matter of a litigation matter, it could  
11 very easily result in collateral litigation, more time, more  
12 expense, more briefing. And I'm trying to avoid that. If  
13 in fact -- which is likely the case -- that Judge Broderick  
14 probably has a very long list of things to do, and while  
15 he'll turn to it quickly, that the odds of him dealing with  
16 it between June 19th and July 10th are probably relatively  
17 small. So, all right. And then that way, we can move on.

18 So, all right. So, we can return in a few minutes  
19 to talking about scheduling and discovery, but I know you  
20 were sort of talking bigger picture.

21 MS. SCHWEITZER: Right.

22 THE COURT: And I don't think you had finished  
23 that. So, let --

24 MS. SCHWEITZER: No, it's --

25 THE COURT: Why don't you do that?

1 MS. SCHWEITZER: It's perfect and it's a perfect  
2 transition. So, I will. In my -- we want at the end -- we  
3 can cross off TROs and PI points, which is nice -- and then  
4 I would take -- I do want to give you our side of the color  
5 of the larger proceedings so you understand what's going to  
6 be contested.

7 I will start by saying a couple of words and  
8 getting to the sealing question right away, because I think  
9 that is a gating issue. So, as the Debtors have told you, I  
10 don't know what is in Binder Number 2. I guess they'd given  
11 you this Driver affidavit.

12 THE COURT: Yes.

13 MS. SCHWEITZER: That's nice. That's one. And  
14 so, that -- our understanding is when the administration  
15 proceeding was opened in Guernsey, there was one affidavit  
16 filed, and it is the Driver affidavit. It is not one of 10  
17 affidavits to support that application. It's not, you know,  
18 partially under seal. It was filed under seal and it was  
19 never unsealed in any way. And I don't think it's a  
20 question for today and I don't purport to be a Guernsey  
21 counsel. My understanding is it's not the practice with  
22 every single case, everything 100 percent is filed under  
23 seal, but that's probably a question for another day. But  
24 it goes to this isn't just like there is a European law that  
25 requires everything to be under seal. That's not the world



1 we're living in.

2 So, regardless, the Guernsey proceeding was  
3 commenced. And I'll go through the rest of that proceeding,  
4 with the lack of activity in that proceeding, a little bit  
5 after this. But the Driver affidavit was sealed. Then they  
6 filed in this court their motion to maintain it under seal  
7 under Section 107. And notwithstanding Debtors' counsel  
8 saying, well, it's not really all confidential, probably  
9 some of this can be unsealed, the order that they present  
10 for the Court to consider is to have the entirety of the  
11 document sealed for the entirety -- it shall remain under  
12 seal until the conclusion of this case.

13 And there's a couple issues with that, is number  
14 one, as Your Honor noted, they haven't made any showing with  
15 regard to commercial sensitivity. I believe that the  
16 application itself --

17 THE COURT: Well, I also know that I've been  
18 pointed to the authority and basis upon which it was sealed  
19 in Guernsey, right? So, it's one thing to say -- and I've  
20 had cases where folks have come in and somebody's made the  
21 following representation, everyone said, yeah, that's right  
22 -- under the rules of that court, these are sealed  
23 proceedings and we cannot -- we all agree we cannot submit  
24 these documents without seeking some sort of relief from  
25 that court.

1           Now, usually what those are are court filings and  
2       proceedings in that court. So, if somebody wants a  
3       transcript, they aren't necessarily underlying documents.  
4       And so, that's where this also seems to be different. I'm  
5       not -- even if you had a rule about these proceedings are  
6       under seal, I don't think -- this is not a transcript of  
7       those proceedings. These are things relating to the Debtor,  
8       which again, if you -- I don't want a bootstrapping problem  
9       where somebody said, we're asking to seal it in Guernsey, we  
10      have a fairly low threshold under the law in Guernsey, and  
11      they say, okay, fine, we don't care one way or the other,  
12      and then have to come to the United States and say, by the  
13      way, they sealed it in Guernsey at our request. It  
14      therefore should be sealed here. That doesn't seem right.

15           So, as you said, I think the rule -- there are  
16      times when there are rules in Europe about what can be made  
17      public in what can't be made public. But I usually am given  
18      a justification and an explanation that's sufficiently  
19      detailed. And oftentimes I can tell that it's not a problem  
20      because everybody who's fighting will stand up and say, yes,  
21      we agree that's a problem and we're taking steps to get that  
22      released.

23           The other thing is, when I've had that happen it's  
24      been proceedings that are relevant, but they aren't the  
25      case. And so, that's -- so if this is being asked to

1 recognize something and I don't really know -- and nobody  
2 else can sort of see it; it's sort of hidden away in a box  
3 and you're only showing me by opening it a little, the  
4 thousand pages, and nobody else can see it, that's another  
5 problem. And in the case that I've had where there's been  
6 matters that have been sealed, you've had parties who had  
7 some idea of what was going on or what the result was.  
8 Again, it was really court proceedings.

9 So, I haven't really had sufficient justification  
10 to really do much of anything with this for purposes of  
11 today. I've gotten it sealed somewhere else, so it should  
12 be sealed here. It's commercially sensitive. That's a  
13 thousand pages. It's a lot of things.

14 And so, in the U.S., obviously, there's a policy.  
15 It's an important policy of having open court proceedings  
16 where possible, and that's an important value. Putting  
17 aside that, we have to have proceedings where folks have a  
18 meaningful opportunity to participate. And if they don't  
19 have something that prevents them from having that  
20 opportunity, that's a whole other problem. So, what I have  
21 today is sort of kind of a Post-it note kind of attached to  
22 this without much behind it.

23 MR. HYMAN: Yeah. No, I appreciate that, Your  
24 Honor, and I appreciate all your comments. Just as a  
25 reminder, we do have Mr. Dingle on the phone to the extent

1 that would be of any value. But --

2 THE COURT: He's on the phone to listen. He's not  
3 -- again, I don't hear argument on the phone, and people  
4 can't appear as a witness on the phone. And so, that's  
5 nice, but it doesn't solve my problem. He can take it all  
6 in and we can -- when we address this again, which I suspect  
7 we will -- people are going to need to be here and we're  
8 going to need a much more fulsome explanation --

9 MR. HYMAN: Yeah, I appreciate --

10 THE COURT: -- for a variety of reasons that I've  
11 just laid out.

12 MR. HYMAN: I appreciate that, Your Honor. And I  
13 imagine that when we come back to court on July 10th,  
14 there's going to be significant disclosure and --

15 THE COURT: I --

16 MR. HYMAN: -- significant discovery and --

17 THE COURT: Well, how can we actually have a  
18 proceeding? I mean, if you want to have -- sort of jumping  
19 the gun here, but there's talk about discovery. I don't  
20 know how we don't have to deal with this first. And then  
21 we're talking about a hearing on the merits. I don't know  
22 how we don't have to do with this first. And by here, I'm  
23 gesturing to the 1,000 pages that are the exhibits to the  
24 affidavit filed in Guernsey, which is all under seal.

25 And also, I mean, I just think that is -- we're

1 going to have to deal with that soon. So, I think we're  
2 going to have to have a conversation next week about what to  
3 do with this, and people can -- we'll get to the details of  
4 what that looks like. But we have to figure out what to do  
5 with this and what's the appropriate way to handle it.

6 MR. HYMAN: Got it.

7 THE COURT: And there also may be ways in the  
8 meantime that -- I don't know if there are ways to get this  
9 addressed where folks can look at documents, even if they  
10 aren't filed publicly. So, I don't know the feasibility or  
11 not of that in the context of this.

12 And again, I don't even know if I have the --  
13 remind me if I have the sealing order from the Guernsey  
14 proceeding.

15 MR. HYMAN: It's actually in the administrative  
16 order itself.

17 THE COURT: All right. Where is that?

18 MR. HYMAN: So, that would be...

19 MR. HITCHINGS: (indiscernible)

20 THE COURT: Sorry, counsel. I didn't mean to sort  
21 of --

22 MR. HYMAN: Yeah, it was Exhibit --

23 MS. SCHWEITZER: (indiscernible)

24 MR. HYMAN: It was Exhibit A to the verified  
25 petition, again, Your Honor.

1 THE COURT: All right. So, Tab 5? Is that right?

2 MR. HYMAN: That was Tab 5, correct?

3 THE COURT: All right. And what Exhibit?

4 MR. HYMAN: Exhibit A. I'm just trying to find  
5 the page.

6 THE COURT: All right. So, it's the pages right  
7 after the actual pleading itself?

8 MR. HYMAN: Yes, again, and I apologize for not  
9 having separate tabs on those pages.

10 THE COURT: Right. So, where -- what's the  
11 language?

12 MR. HYMAN: It's in the second order and it's the  
13 first paragraph. The hearing on this matter be in-camera  
14 and the court file be sealed.

15 THE COURT: All right. Well, that's not much more  
16 illuminating than --

17 MR. HYMAN: And --

18 MS. SCHWEITZER: And you'll notice the evidence  
19 from above it appears to be the affidavit of Mr. Driver.  
20 So, we don't have the basis for sealing. And to further  
21 that -- because I completely agree with everything you said,  
22 so I'm not going to double argue it -- but if you look at  
23 the exhibit attached to the motion to seal, there's  
24 correspondence with Mr. Dingle --

25 THE COURT: Right.

1 MS. SCHWEITZER: -- and the court where he says,  
2 oh, I know this is confidential, so I'm going to just file  
3 it under seal, or I'm going to seek to file it under seal,  
4 and it's like, okay. But he doesn't make any effort to get  
5 permission to not file it under seal.

6 THE COURT: Yeah. No, I do recall it's a bit of  
7 leading the witness. So, yeah. So, we're going to have to  
8 deal with this. So, while we dealt with the TRO issue and  
9 so we don't need a quick hearing on this, I think we're  
10 going to need a quick hearing on this particular issue.

11 And so, the 10th seems too soon and  
12 (indiscernible) busy day here. So, I'm looking at maybe the  
13 13th, which is also the (indiscernible).

14 (Court confers with Clerk)

15 MS. SCHWEITZER: So, Your Honor, the 13th is fine  
16 for us. I assume from the things I'm hearing you say is  
17 that there would be a need for live evidence or an  
18 evidentiary record for that.

19 THE COURT: Yeah, well what I'd like to do is I'd  
20 like to get a supplemental filing to justify the sealing. I  
21 really -- again, all I understand is that it was sealed in  
22 Guernsey and the order doesn't really tell me much more than  
23 that. And I don't -- and then the only other thing I have,  
24 it says confidential business information, but then it's not  
25 tied to the thousand pages, or more than a thousand pages,

1       that I have. And obviously, here in the U.S., we are in the  
2       business of redacting things where they're appropriate to be  
3       redacted.

4               So, again, I can't tell if the request was made in  
5       Guernsey and the Court in Guernsey said, okay, we're happy  
6       to do that, and then you went back and said, well, we want  
7       to do the same thing in the U.S. and they probably said, we  
8       don't care, it's not really our problem. If this is a  
9       currency court-imitated sealing requirement, and if so, is  
10      there a way to address that and get these things unsealed?  
11      What is it that we're -- when we get down to the brass  
12      tacks, what is it that shouldn't be part of a public record?

13             MR. HYMAN: Your Honor, I appreciate your comments  
14      again. And I think what we'll do is we'll endeavor to spend  
15      some more time on this when we've got some more time and we  
16      haven't been trying to get these papers filed, to better  
17      understand the confidential nature to the extent -- and to  
18      the extent that we can disclose certain portions of this, we  
19      will reach out to Cleary and see if we can get this resolved  
20      in the interim, perhaps avoid a court hearing. But if not,  
21      you know, we're happy to come back with a more narrow list  
22      of --

23             THE COURT: So, how long --

24             MR. HYMAN: -- of requests.

25             THE COURT: -- do you want to have to file a



1 supplement to your -- I'm going to essentially adjourn the  
2 motion to seal, right? And so, when do you want to file a  
3 supplemental pleading on that? I'm thinking the 7th,  
4 Friday.

5 MR. HYMAN: Sure, Your Honor.

6 THE COURT: All right. So, let's do that. And  
7 then why don't you do that by noon. And then how long do  
8 you want to respond?

9 MS. SCHWEITZER: Could we -- 5:00 on the 11th?  
10 Does that give you enough time to look at the paper?

11 THE COURT: Yeah. No, that's fine. I was going  
12 to say noon on the 12th.

13 MS. SCHWEITZER: We are happy to take that. We  
14 didn't want to impose on you.

15 THE COURT: I'm in hearings for all the morning on  
16 the 12th, so that's fine.

17 MS. SCHWEITZER: We appreciate that, Your Honor.

18 THE COURT: And so, then we'll have a discussion  
19 on the 13th. I think we just scheduled something for...

20 (Court confers with Clerk)

21 THE COURT: I just scheduled something for that  
22 afternoon, and I'll blame it on being a parent. So, as you  
23 mentioned --

24 MS. SCHWEITZER: There you go.

25 THE COURT: -- the (indiscernible) element and the

1 other aspect, which is I can't remember what I just  
2 scheduled, and I want to find out what it is. But we'll  
3 schedule it sometime that afternoon and we'll figure out  
4 what time --

5 MS. SCHWEITZER: Okay.

6 THE COURT: -- in a minute, once I figure out what  
7 that is.

8 MR. HYMAN: Your Honor --

9 THE COURT: So, that's how we'll deal with  
10 sealing, rather than spinning our wheels today on an  
11 incomplete record.

12 MR. HYMAN: Your Honor, can I just make one  
13 request in that we have until the end of the day on Friday  
14 to file our response rather than noon?

15 THE COURT: I need to read it. I mean... So, I  
16 think, actually, what I was thinking about is whether -- if  
17 we need to deal with the TRO, which by their nature expire  
18 after 10 days, whether we need another TRO hearing. So, I  
19 think I had preemptively blocked out the afternoon of the  
20 13th. So, you can --

21 MS. SCHWEITZER: Oh, you did it for us.

22 THE COURT: Yeah. So, it was free to you all.  
23 So, let's say 3:00 on the 13th. Actually, let's make it  
24 2:30, just in terms of we don't know how long it may go.  
25 So, 2:30 on the 13th.

1 Today is the 4th. That gives you a couple of  
2 days. I know it's not perfect, but again, they need a  
3 chance to reply, I need a chance to read everything and get  
4 ready, and I have a lot of stuff going on next week. I have  
5 knockdown drag out fights on Monday, on Wednesday, on  
6 Thursday. So, I need some time. So --

7 MR. HYMAN: No problem, Your Honor. We'll get it  
8 done by noon.

9 THE COURT: All right. So, all right. So, I  
10 think -- is there anything else on sealing?

11 MS. SCHWEITZER: There's one bootstrapping issue  
12 on sealing, which is the declaration of Michael Cohen -- oh,  
13 I'm sorry, Malcom Cohen.

14 THE COURT: Right.

15 MS. SCHWEITZER: I apologize. In Paragraph 7, you  
16 know, he gives the standard on the joint administrator in  
17 Paragraph 6, so it's my personal knowledge and all these  
18 other things. And then he says, in particular, I have  
19 relied upon the affidavit of Mr. Driver in support of -- you  
20 know, what we'll just call the Driver affidavit, which was  
21 submitted to the Court under seal in support of their  
22 things. And certain things are sensitive, but he refers, in  
23 this declaration, to the Driver affidavit, and in some  
24 places specifies it. But I don't know what I don't know,  
25 right? I don't know what's his personal knowledge.

1           And when he's saying, I relied on this Driver  
2       affidavit and it's sealed, I guess at a minimum I would ask  
3       that to the extent that they intend to offer this as  
4       evidence, that they indicate where things are not personal  
5       knowledge or they strike it, or I --

6           THE COURT: Well, they -- so, I think one of the  
7       things that -- the prism under which sealing has to be  
8       looked at is right. There is a burden for purposes of  
9       recognition. And folks have to be able to satisfy that  
10      burden and presumably do so with information that's on the  
11      public record and can be subject to cross-examination and  
12      review.

13           So, I agree that that's relevant. And so, I  
14      haven't gone through -- although it did occur to me -- how  
15      the information set forth in this declaration of Malcolm  
16      Cohen can be public and various things -- the things that  
17      here can't be. And I don't know where the dividing line is.  
18      And I know that the details in trying to figure that out can  
19      often be really hard to figure out. So, I think we really  
20      have to think about what the principles are that is the  
21      basis for sealing these things and then work it out.

22           So, the other thing I will say is to the extent  
23      that folks think it would be helpful to have a conversation  
24      later in the week to talk about this, I'd be happy to do  
25      that. We can get folks on the phone to work through some of

1       these issues. Because what I don't -- what wouldn't be  
2       helpful is if people stand in ceremony, file their briefs,  
3       and then we find ourselves in another slightly more advanced  
4       version of the same conversation on the 13th, because it's  
5       just going to be a recurring problem.

6               So, it may be that it would be helpful to have a  
7       discussion. I'm at the Second Circuit Judicial Conference  
8       tomorrow through Friday. But I certainly could make time if  
9       it would be helpful. What I would ask is if you want to  
10      have a conversation, just give me a couple of options and  
11      I'll pick one to have a discussion. It might be helpful,  
12      rather than sort of saying, well, we're just going to  
13      litigate it. I mean, you may end up litigating aspects of  
14      it, but I think everybody understands that for this case to  
15      move forward, we've got to figure this out sooner rather  
16      than later.

17             MR. HYMAN: Your Honor, we agree with that. And  
18      again, we weren't really trying to hide the ball. What we  
19      were trying to do is get papers filed and prepared in an  
20      expeditious manner, recognizing the fact that there was the  
21      ceiling order in Guernsey.

22             THE COURT: All right.

23             MR. HYMAN: We will go through it very carefully  
24      and we will examine to the extent that there is some real  
25      sensitive information. And we'll be back, and we'll be

1 addressing that in our papers.

2 MS. SCHWEITZER: Right. And Your Honor doesn't  
3 have to rule on this today, but I think it's going to be  
4 this week or next week, or whenever this hits the hay. But  
5 if, in fact, the Debtors are pushing for sealing and it were  
6 to be granted, then we would want to know how that ties into  
7 Mr. Cohen's statements, right, I sealed this under the  
8 representation that it's implicit in there. So, I don't  
9 think we have to make a final decision here --

10 THE COURT: No, no --

11 MS. SCHWEITZER: -- but I don't want to forget  
12 that.

13 THE COURT: -- there's a sword shield problem.  
14 Yeah, I understand. So, if we did have a chat about it, I  
15 would think Friday might be too late. So, I would think it  
16 would probably have to happen Thursday, right? We don't  
17 want to -- if you -- once you file something on Friday, you  
18 filed something on Friday. So, I would think Thursday or  
19 even Wednesday would be the time for having a discussion.

20 MR. HYMAN: We will probably need until Thursday.  
21 The folks in Guernsey in England are quite a few hours ahead  
22 of us, and we've probably lost them for the day. So, we'll  
23 reengage with them --

24 THE COURT: All right.

25 MR. HYMAN: -- first thing tomorrow morning and

1 try to --

2 THE COURT: And if I have a particular --

3 MR. HYMAN: -- be as productive as possible on  
4 this issue.

5 THE COURT: -- window on Thursday, my chambers  
6 might reach out to let you know what that is, just to make  
7 life easier. I know there's actually an International  
8 Insolvency Panel at the Second Circuit Judicial Conference.  
9 And I would like to attend that. It would be ironic to miss  
10 that panel for this case. So --

11 MS. SCHWEITZER: It's like phone a friend.

12 THE COURT: Yes. So, again, if I have a  
13 particularly good window, I might -- I'll circulate that in  
14 advance to make --

15 MS. SCHWEITZER: Okay. We --

16 THE COURT: -- like a little bit easier for you  
17 all.

18 MS. SCHWEITZER: We will find someone on our team  
19 to be available. Obviously, we greatly appreciate Your  
20 Honor's offer. I think the ball is in the Debtors' court to  
21 introduce something for us to talk about.

22 THE COURT: Right.

23 MS. SCHWEITZER: But we're always happy to find  
24 prospective solutions.

25 THE COURT: Yeah. What I would imagine -- the

1     only way that call makes sense is for the Debtors to get a  
2     bunch of information and to refine their position, and then  
3     call you and say we haven't' filed our papers yet, but I can  
4     tell you the following things to advance the ball, A, B, C,  
5     D. And then you have a conversation and say, in light of  
6     that and in the interest of efficiency, it would be very  
7     helpful to have a discussion to try to remove some issues  
8     from the litigation plate.

9             So, if we have a discussion with the Court -- but  
10     yeah, they would have to -- I'm not suggesting that people  
11     leave here today, not talk to one another, and we just have  
12     sort of a random call later this week, that's probably not  
13     going to help things.

14            MR. HYMAN: Yeah.

15            THE COURT: So, again, I would suggest that  
16     Debtors figure some things out and then reach out to  
17     counsel, and with the idea of trying to advance the ball  
18     forward so the case can actually be meaningfully litigated.  
19     And then if there is some particular issue that you think  
20     would be useful to talk about in advance, we can do that.  
21     And there might not be. There might be, hey, we figured out  
22     a few things, we've narrowed some issues, but we still have  
23     some other issues and we're just going to brief them, and  
24     we'll talk about it on the 13th.

25            All right.



1 MS. SCHWEITZER: Great. So, I think -- I'm very  
2 mindful of the time. We have gone for a while and I know  
3 you've accommodated us today. I would like a couple minutes  
4 just to give you --

5 THE COURT: Sure.

6 MS. SCHWEITZER: -- some of our overarching  
7 concerns or color, I think I would say. I think Mr.  
8 Blackman would hook me if I didn't. And I will start with  
9 that. But the -- just as a high level, I think you hear the  
10 issues being -- percolating around. Vale had entered into a  
11 joint venture agreement with the Debtor company years ago.  
12 It was to get mining rights in Guinea. Vale had paid about  
13 \$1.2 billion, which was part, but not all, of what they were  
14 ultimately supposed to invest in that project.

15 And you do have the arbitration award in front of  
16 you. And I will say it very quickly, and Mr. Blackman might  
17 want to add a couple of color notes around it. But what  
18 basically happened was around 2014, there were -- they might  
19 say allegations; we would say findings or facts --  
20 discovered about Mr. Benny Steinmetz, the ultimate owner or  
21 beneficiary of this chain of corporations, that there was  
22 fraud by him.

23 And in connection with that investment, the  
24 Debtors had said that there was a change in the  
25 administration in Guinea, which caused loss of concession

1 rights. There are allegations and, I believe, possible  
2 proof regarding bribery. But certainly, lots of questions  
3 and untoward behavior linked to the loss of the concessions.

4 Vale sought to rescind the concession and get  
5 their money back and commenced an arbitration in 2014  
6 seeking rescission and damages, and you can imagine the  
7 bucket of claims that went. It was a long -- you see the  
8 arbiters like to write long decisions, and they basically,  
9 in the long and short of it, awarded rescission of the  
10 contract, awarded damages, and in particular, notably, made  
11 findings that Mr. --

12 MR. BLACKMAN: Steinmetz.

13 MS. SCHWEITZER: -- Steinmetz -- I apologize. Mr.  
14 Steinmetz had made misrepresentations in connection with the  
15 due diligence into the entry into the joint venture that  
16 were connected to representations he made about the absence  
17 of bribery, that there was no bribery in connection with  
18 obtaining of the mining rights. So, that award was entered.  
19 Vale then got that award recognized in London and the  
20 Debtors -- and that was May this year. The award came down  
21 in April of this year. Early May, Vale got a recognition  
22 award. And then there's been some litigation going back and  
23 forth in London about the Debtors coming and trying to have  
24 that unrecognized.

25 The Debtors have not sought recognition of the

1       Guernsey proceeding in London. I believe they first took  
2       the position that there was an automatic stay of the  
3       arbitration or for their proceedings. We opposed that. And  
4       we said, you can apply for it, but we're going to see  
5       discovery on these different issues. And they never went  
6       forward after that fact. So, they are litigating the  
7       question of, you know, whether it's subject to review. But  
8       there's no bankruptcy Chapter 15 equivalent going on in  
9       England.

10               THE COURT: Do you have any sense or views as to  
11       why this proceeding is the form in which things have been  
12       pursued, as opposed to London?

13               MS. SCHWEITZER: So, I think that -- well, I think  
14       there was a dodge and weave practice all along, and so the  
15       Debtors, in their papers, give you the reason that by filing  
16       an objection or a rehearing or challenge to the London stay,  
17       that they -- right now, we are stayed from enforcing until  
18       that proceeding is resolved.

19               I think also, as we said, is that we did say to  
20       them, you can go seek recognition, but if you seek  
21       recognition, the Court can take discovery of the proceeding.  
22       The Court can take discovery on all the underlying acts.  
23       And so, I can't purport to be in the Debtors' mind of why  
24       they didn't

25               THE COURT: All right.

1 MS. SCHWEITZER: -- follow up with them. They  
2 present today the plain-vanilla Chapter 15 high-five  
3 recognition story, and that's -- you can probably see in  
4 here where we're going with our issues and concerns. I  
5 think the issues and concerns here are kind of going to the  
6 larger, what's going on that -- is there a robust Guernsey  
7 proceeding and why does this Guernsey proceeding exist at  
8 all, right?

9 And so, this Guernsey proceeding was started, two  
10 joint administrators were appointed. There's a Guernsey  
11 joint administrator and a London joint administrator. So,  
12 you have -- we don't have to do it today, but COMI issues  
13 regarding where is this thing taking place.

14 There have only been two reports issued to date  
15 that we know of, both of which are in the application  
16 materials, and both of them say we're going to pursue a  
17 restructuring where we continue to pursue our litigation or  
18 assets, the Soros litigation, and this exit arbitration for  
19 the Debtors to get back these mining rights. Not for us.  
20 They're challenging -- they're going and challenging the  
21 denial of the revocation of the mining rights. So, maybe  
22 they get their cake and needed too, or who knows what. But  
23 those were their assets they wanted to pursue: exit  
24 arbitration and Soros.

25 In the papers today, the Debtors are describing

1 the Soros litigation as the litigation where all the money's  
2 at. But -- and I'm being whispered in my ears that maybe  
3 there's details and it's not quite accurately described at  
4 different places -- but there's been no action or pursuit of  
5 the Soros litigation all this time. That it's -- I think  
6 the papers say that since 1017, there's been no progress in  
7 that case.

8 So, it's a little odd to call it the reason that  
9 you need a Chapter 15 and you need a restructuring is to  
10 realize the value of the Soros litigation, but nothing's  
11 happening in the Soros litigation. And then your only other  
12 asset is to go after this Guinea ICSID arbitration. Again,  
13 allegations. I don't of evidence. I know what I'm being  
14 told overnight and what I'm being shown, is that there was a  
15 press release or a report, some public media report, that  
16 Mr. Steinmetz, the main --

17 MR. BLACKMAN: Steinmetz.

18 MS. SCHWEITZER: Steinmetz -- I apologize --  
19 Steinmetz --

20 THE COURT: You can just call him the owner.

21 MS. SCHWEITZER: Benny. We're going to call him  
22 Benny. So, Benny had reached a finding settlement with  
23 Guinea, Guinea government, whoever gets the concessions  
24 regarding that arbitration. Not that the joint  
25 administrators had, but the owner had reached the settlement

1 to the point where the joint administrators came out and put  
2 a press release out saying, oh, we didn't enter into any  
3 finding settlement. And now, in these papers, there's a  
4 description of a non-binding settlement.

5 And so, it appears we have serious questions  
6 regarding who is in charge, right, and who's running this  
7 case, and what is this restructuring being used for other  
8 than to fight off legitimate judgment creditors, and to  
9 continue those actions and kind of world-wide running  
10 around. Other --

11 THE COURT: So, what would be the -- what would be  
12 the normal exit for this kind of a proceeding in Guernsey,  
13 right, so what is --

14 MS. SCHWEITZER: In Guernsey?

15 THE COURT: Yeah.

16 MS. SCHWEITZER: So, my understanding is --

17 THE COURT: Is it a scheme of arrangement? What  
18 is it?

19 MS. SCHWEITZER: So, again, this is what I've  
20 learned overnight, is that it's basically you can  
21 reorganize, or you would go to a liquidation that you try to  
22 figure out whether you're going to reorganize or not. The  
23 papers say, we're going to reorganize.

24 The concerns we have are who is "we", and the  
25 reorganization, if there is one, think of it more

1 (indiscernible), I guess. The administrators are appointed  
2 to look after the estate and to reorganize the estate. What  
3 they are doing is -- or someone is doing -- is pursuing this  
4 exit arbitration and trying to settle that, which benefits  
5 the owner personally. They're trying to hold off paying  
6 creditors.

7 What we also know, which is not within their  
8 reports, is even something on their radar screen or that  
9 they're concerned about, is that the evidence that's been  
10 collected to date in connection with the arbitration is the  
11 \$1.2 billion. It's not that we paid Vale. It didn't go to  
12 the mine. It's not sitting at the Debtor. It was  
13 upstreamed to the parent. The same parent who is now -- or  
14 a parent affiliate within the corporate group, who is now  
15 funding this Guernsey restructuring -- that they mentioned  
16 this funding agreement, it's from an affiliate funding down.  
17 The funding agreement has not been disclosed. We don't know  
18 the terms. We don't know if there's any limitations on the  
19 purpose for the funding agreement.

20 But what we do know is the joint administrators  
21 are not talking at all about having any interest or concern  
22 or desire to look into any of these allegations of potential  
23 bribery, of potential loss of corporate assets.

24 THE COURT: So, you had mentioned COMI before.  
25 So, what I've heard thus far has a lot to do with some of

1 the procedural and creditor protections that would be part  
2 of a recognition hearing. I just wanted to ask you if you  
3 had -- you had mentioned that you were going to challenge  
4 COMI, if you had a view about COMI.

5 MS. SCHWEITZER: So, I do have a view --

6 THE COURT: You don't have to have a view today,  
7 but I just -- since you mentioned it, just to fill out the  
8 picture.

9 MS. SCHWEITZER: No, actually, I do have a view  
10 that the record at a minimum is incomplete as it is now.  
11 Again, the same way that they comment and say everything's  
12 under seal in Guernsey, it's under seal here. The COMI  
13 application is pretty much -- I'm being a little over-  
14 simplistic -- I've got a Guernsey proceeding; it's a main  
15 proceeding; recognize it here; I've got a liquidator; you  
16 know, joint administrator; I recognize even one of those  
17 joint administrators in London, and we talked to each other;  
18 so maybe it's not wholly Guernsey, but you know, it's a  
19 COMI.

20 Our concern is who are the employees? There's no  
21 disclosure of I've got 30 employees, this is where they are.  
22 We know there are assets. Are there interests in -- or  
23 potential interests in a Guinea mine in the Sierra Leone  
24 Diamond Company, and we know that there's -- we heard that  
25 the Board of Director of the subsidiaries are still in



1 place. The declaration makes mention of management still  
2 actively participating. And we don't know the role of the  
3 parents in funding.

4 So, I don't know. I'm just kind of like, yeah, I  
5 know the question is if this isn't a COMI, where is the  
6 COMI. I'm not quite sure of the basic questions you have  
7 asked, which is who is really running this case? Where are  
8 the assets? What is going on? Because nothing is happening  
9 in the Guernsey proceeding itself.

10 THE COURT: So, let me -- that segues into one  
11 other question, and it's probably my last for the day, which  
12 is I -- and maybe it's more of an observation -- given the  
13 need to sort through this -- and again, I'm gesturing to the  
14 declaration and exhibits in Guernsey that are under seal in  
15 Guernsey -- and to work through that as well as to work  
16 through some of the issues you just mentioned -- I have my  
17 doubts whether we'll be there by the time July rolls around  
18 in terms of the need for your -- any requests for discovery,  
19 any of that.

20 And the reason why I mentioned it now is because  
21 if we're -- if we sort of have two proceedings that we're  
22 trying not to bump into each other, they may have an  
23 interest in doing it quickly, you may have an interest in  
24 doing it quickly, but procedurally, we may just not be  
25 there. It isn't a today issue, but it'll be something I

1 think people need to keep in the back of their minds as we  
2 begin to work seriatim through problem number one -- again,  
3 I reference the materials under seal in Guernsey -- then  
4 discovery, then other issues, it may take time.

5 I am completely agnostic about what that means or  
6 doesn't mean for purposes of any requests for injunctive  
7 relief and the District Court proceeding in front of Judge  
8 Broderick. But I think it may mean that as we go past the  
9 immediate problems and we start getting to later in the  
10 months, that we may need to think about what to do and how  
11 all these things play together.

12 But again, I don't think it's a today issue. So,  
13 we're going to just start to solve problems, see where we  
14 end up, and then have it be part of the ongoing discussion.  
15 But I just -- a lot of these cases come in, as you say, in a  
16 very full-formed posture, and people know what it is that  
17 happened. They have a pretty good idea of the issues. And  
18 even challenges to -- and have also found generally the  
19 challenges to recognition often take longer than the, you  
20 know, hey, we're going to schedule a date so many dates out  
21 and that'll be our recognition hearing. None of that has  
22 gone quite as planned when I've had sophisticated challenges  
23 to recognition.

24 So, not a today issue, but something that I would  
25 ask the parties to think about, talk to each other about,

1 and we'll talk about it later this month and maybe we'll  
2 talk about it on the 13th as we begin to work our way  
3 through some issues.

4 MR. BLACKMAN: Right. Your Honor, I just didn't  
5 want to -- don't want to trespass on your patience, but you  
6 did mention the word discovery, and I think that's really  
7 the key because the joint administrators have not been  
8 transparent. They've been the opposite of transparent.

9 I can say personally we have asked them  
10 repeatedly, tell us what's going on with this supposed  
11 Guinea settlement. They've said, no, we can't. Show us the  
12 term sheet. They've said, no, we won't. We don't know  
13 what's happening there.

14 What we do know from the arbitration -- and I'll  
15 just give you one example, and it's part of the things we  
16 want to pursue in discovery -- is we learned in the  
17 arbitration that the administrators have these documents.  
18 And we urged them to read the record of the arbitration,  
19 because they're supposed to be acting for the benefit of all  
20 the creditors. What we learned in the arbitration is that  
21 \$200 million of the \$500 million original payment was  
22 immediately funneled directly from BSG up to the Balda  
23 Foundation.

24 THE COURT: No, I got it. Again, I understand.

25 MR. BLACKMAN: They haven't even examined --

1           THE COURT: But the thing is, we're going to first  
2     have to go through, I think, this. Again, I gesture for  
3     probably the sixth time to the stack of more than a thousand  
4     pages. And then we're going to have to see what that means  
5     for purposes of other discovery, right? Because this is --  
6     somebody chose to put this together. It may or may not  
7     address in a fulsome way other things that you all want to  
8     know. But at least it certainly is something that is at the  
9     very least a starting point.

10           But again, that's why I -- right now, we can  
11    successfully avoid any sort of timing problems between this  
12    proceeding in the District Court proceeding. But from what  
13    I'm hearing, the amount of work that needs to happen between  
14    now and a full-blown recognition hearing on the merits  
15    doesn't look like... It doesn't look like the calendar  
16    schedule we're talking about, July 10th, it just doesn't --  
17    that would surprise me greatly if we were able to get there.

18           So, eventually we'll have to talk about what does  
19    this mean and what -- how do people want to handle the  
20    existence of the other proceeding, whether the Debtors  
21    should file a motion for a stay, whether that should be  
22    addressed. I don't know the answer to any of these  
23    questions and I'm agnostic on all of them. But I just know  
24    it takes a certain amount of time to work your way through  
25    various issues, and July 10th, the quote the movie "Apollo

1 13", the Earth's looking awfully large in the window. I  
2 just -- I don't know that we're realistically getting there  
3 by that time.

4 MS. SCHWEITZER: Right. Totally understand. I  
5 think that it's very helpful guidance. And I know that as  
6 advocates we're always more zealous and ambitious than --

7 THE COURT: Well, that's your job.

8 MS. SCHWEITZER: -- so we should be -- but --

9 THE COURT: That's the only thing, actually, that  
10 I think both of you agree upon is you'd like to get it done  
11 July 10th --

12 MS. SCHWEITZER: Right.

13 THE COURT: -- and on the bucket of cold water --

14 MS. SCHWEITZER: Right.

15 THE COURT: -- on that one, and I just --

16 MS. SCHWEITZER: Yeah.

17 THE COURT: You're all experienced and no doubt  
18 have an ability to --

19 MS. SCHWEITZER: Right.

20 THE COURT: -- much more accurately --

21 MS. SCHWEITZER: Right.

22 THE COURT: -- assess this. And so, we'll get  
23 there. But I think that that's worth -- as we start to talk  
24 about sealing on the 13th, I think that --

25 MS. SCHWEITZER: Right.

1 THE COURT: -- and what things look like going  
2 forward --

3 MS. SCHWEITZER: Right.

4 THE COURT: -- is a natural conversation.

5 MS. SCHWEITZER: And I appreciate that. And maybe  
6 those documents are within their -- it's the same mantra --  
7 you can't make something privileged just by sticking it in a  
8 -- by passing it to your attorney, it doesn't become  
9 privileged in itself. I don't know what's in that binder.  
10 But I imagine, and I think it's worthwhile, we will endeavor  
11 to also, without prejudicing rights to larger discovery,  
12 think about certain fundamental threshold things that, you  
13 know, whether it's the funding agreements or these --  
14 there's only two or three sources of money, and they're all  
15 litigation funding, and we believe they all roll up to the  
16 parent.

17 There's a couple kind of -- you know, if you give  
18 me a list of 30 things I could ask for, I could make that  
19 list probably. So, I think that we can certainly focus on  
20 certain gating issues that should be noncontroversial. And  
21 if they're controversial, we should know that before a month  
22 from now, and use this parallel opportunity.

23 THE COURT: All right. So, we're going to use the  
24 13th as the date to get together and talk about the sealing.  
25 And at that time, we will talk about the schedule going

1 forward. So, that leads me to the following practical  
2 question.

3 Normally, right, a Chapter 15 case gets filed,  
4 order scheduling a recognition hearing gets entered. So,  
5 the question is what we want to do with that? Do we want to  
6 -- and I know that has certain various notice requirements  
7 and that are expensive and time-consuming? So, do you have  
8 a proposal, counsel, as to what you want to do? Do you want  
9 to put a pin in that for the moment?

10 MR. HYMAN: Your Honor, notice is not particularly  
11 extensive under these circumstances. It's really just a  
12 number of creditors and potential parties in interest that  
13 we propose to provide notice to. I think that we should  
14 stick with the July 10th date for the moment. And to the  
15 extent that on this coming Friday or Thursday, or next week  
16 when we're back before Your Honor, if indeed we need to be  
17 back before Your Honor, and we've had an opportunity to have  
18 some further conversations about what a discovery schedule  
19 might look like, perhaps we can suggest some alternatives.

20 THE COURT: All right. I just didn't want that to  
21 get entered and scheduled under false pretenses, so anybody  
22 thought, like wow, we really were counting on it. And you  
23 know, it's a bit of a social compact when do these things  
24 and get these orders entered. And again, I don't really see  
25 that that's realistically going to come to pass.

1 But if the idea is let's get it scheduled, will  
2 use it as something to strive towards, but we don't have any  
3 misconceptions that we may not end up there. That's fine.

4 MR. HYMAN: I appreciate it. And I think we will  
5 certainly work cooperatively as it relates to the Driver  
6 declaration.

7 THE COURT: All right.

8 MR. HYMAN: And we appreciate the opportunity to  
9 come back before the Court --

10 THE COURT: All right. So, what I'd ask -- I  
11 don't know if there's any objection to the form of order for  
12 the order scheduling the recognition proceeding on the 11th  
13 of July -- I'm sorry, the 10th of July -- in the afternoon?  
14 So, chat with one another and then just send me the form  
15 order electronically.

16 MS. SCHWEITZER: Yeah, I don't believe there is an  
17 objection. We can take one, read through it, but it's a  
18 notice.

19 THE COURT: And so, we'll schedule it for 2:00 on  
20 that date. And again, subject -- and I'll throw out the  
21 possibility and I'll defer to your better judgment whether  
22 it is at all worth saying that -- I don't remember if it has  
23 in it in its present form the notion -- since you're dealing  
24 with overseas parties as well -- that the recognition  
25 hearing may be adjourned, as appropriate, by notice and



1 order, and service will be given. However you want to say  
2 it to warn people that this may not be the final date. But  
3 I'll leave it to you if you want to craft some appropriate  
4 language.

5 All right. So, let me ask, I know there are other  
6 parties here. Let me us first if there was anything else  
7 that -- counsel, that you had that you wanted to address  
8 this afternoon?

9 MS. SCHWEITZER: No, Your Honor. Even though  
10 we're not the movant, we do appreciate you taking the time  
11 to hear us all and give us the time of day today. 2:48:02  
12 time of day? So, thank you.

13 THE COURT: And before I hear from Debtors, is  
14 there anybody else in the courtroom who wishes to be heard?

15 MR. MCCALLEN: Yes, Your Honor. Thank you, Your  
16 Honor. Again, Benjamin McCallen, Wilkie Farr & Gallagher,  
17 on behalf of George Soros and Open Society Foundations.

18 You heard my clients referenced earlier today. We  
19 are the Defendants pending in front of Judge Keenan in the  
20 Southern District of New York, which is referred to as the  
21 Soros claim. Your Honor, lawyers like to talk, and so I --  
22 but I'm going to resist the temptation to come up here and  
23 repeat a lot of things that have already been said or that  
24 cover new ground. I just didn't want to in the initial  
25 instance have our silence taken as a lack of interest in

1 what is going on here today.

2 The fact of the matter is that the litigation in  
3 front of Judge Keenan has been stayed for the last year and  
4 a half. We think it's a meritless claim and a frivolous  
5 claim, and we filed a motion to dismiss. And ultimately, it  
6 was stayed upon our motion to dismiss or stay in the  
7 alternative, pending one of the arbitration proceedings  
8 you've heard about here today, not the one involving Vale,  
9 but the other one involving the Republic of Guinea.

10 I think, given the length that we've gone you this  
11 afternoon, it's not a good use of anyone's time for me to go  
12 into any details around that. But our case has been stayed  
13 for the last year and a half.

14 Last night at 6:00 I got notice of these  
15 proceedings. And so, I haven't had an opportunity to fully  
16 consider what is going on and how that affects our  
17 proceedings, or to adequately discuss it with my client.  
18 But we may very well be deciding to take a position with  
19 respect to the Chapter 15 proceedings here. I just don't  
20 know yet at this point whether that's the case.

21 And like I said, I know no one's waiving any  
22 rights, but obviously the parties, VALE, and the Debtors are  
23 up here working out schedules. And to the extent that we  
24 determine we think it's appropriate for us to be a part of  
25 any of this, we'll of course let the parties know and we'll

1 sort that out. And if we can't, we know where to find Your  
2 Honor.

3 THE COURT: All right.

4 MR. MCCALLEN: Thank you.

5 THE COURT: That's fine.

6 MR. MCCALLEN: That's all for today. Thank you.

7 THE COURT: All right. Anybody else wish to be  
8 heard? All right. So, anything else from the Debtors?

9 MR. HYMAN: No, Your Honor. I think that we've  
10 made a lot of progress today. I just wanted to comment on  
11 one or two things that Ms. Schweitzer said during her time  
12 at the podium.

13 There was a reference to the action being brought  
14 in bad faith, and there was some allegations as to the  
15 actions of the joint administrators. We obviously contest  
16 that. We believe the joint administrators are filling their  
17 role under the terms of the administrative order in  
18 Guernsey.

19 THE COURT: I recognize there are contested issues  
20 and I recognize people are giving me their views of the  
21 case, and yours is sort of set forth in your papers, and I  
22 understand that. So, you don't need to defend your clients'  
23 honor for purposes of today, just to make your job a little  
24 easier.

25 MR. HYMAN: I appreciate that, Your Honor.

1 Obviously, we're also going to have a very different -- we  
2 may have a very different view on what discovery is  
3 appropriate under the circumstances.

4 THE COURT: I suspect you will.

5 MR. HYMAN: We look forward to having all those  
6 conversations.

7 THE COURT: All right. So, let me ask whether  
8 folks want to memorialize in some sort of writing the  
9 resolution of the TRO for purposes -- I mean, I consider it  
10 on the record and I'll so order the record, but I'm guessing  
11 that that's probably something you'd like to supplement was  
12 something in writing. But I'll leave it to you all as to  
13 whether you want to go there.

14 MR. HYMAN: Yeah, I think -- you know, we're  
15 pleased that it's on the record, but we will also propose  
16 some language --

17 THE COURT: All right, so --

18 MR. HYMAN: -- to make sure that we're on the same  
19 page.

20 THE COURT: -- put together a stipulation and  
21 order. And again, I think that something we'll have to  
22 revisit once we chat on the 13th as to scheduling and other  
23 things.

24 MR. HYMAN: I think the last comment that I would  
25 make is what I've been told by my partner in Philadelphia

1 that's been repairing the response, is that it's framed as a  
2 cross-motion to defer enforcement. I don't know if --  
3 whatever it might be.

4 THE COURT: It is whatever it is.

5 MR. HYMAN: It is what it is.

6 MR. BLACKMAN: No. And I can tell the Court, one  
7 of the things that you can do under the New York convention,  
8 is to say, stay enforcement of what's called the secondary  
9 jurisdiction, which is New York, pending resolution of an  
10 attempt to set aside the award of the primary jurisdiction,  
11 which is England. That's not surprising. We'll respond to  
12 it and tell the Judge, no, and he'll litigate it. And our  
13 stipulation will make sure that whatever he does doesn't  
14 result in some order that will interfere with this  
15 proceeding.

16 THE COURT: All right.

17 MS. SCHWEITZER: Right.

18 THE COURT: So, up through the date that you've  
19 worked out, and then everybody reserves all their rights  
20 otherwise, right?

21 MS. SCHWEITZER: Right. I would say, we're not  
22 there. We are not -- we haven't agreed to anything beyond  
23 July 10th right now, so...

24 THE COURT: Right.

25 MS. SCHWEITZER: That's good.

1 THE COURT: No, I understand. And that's why I  
2 wanted to flag the notion of what I -- how long I suspect it  
3 may take us to deal with things here, and what it looks like  
4 after July 10th. I don't know that. Then we'll have to  
5 chat about it.

6 All right, so the motion to seal is being  
7 adjourned to the 13th to address the kinds of issues that  
8 we've been talking about. The motion for a TRO has been  
9 resolved for the moment through July 10th, subject to  
10 further discussions. You'll submit something in writing, a  
11 proposed stipulation and order, and party reserves all their  
12 other rights. And we'll continue to have that conversation.  
13 And I will sign the proposed order scheduling the  
14 recognition hearing for July 10th in the afternoon at 2:00.  
15 But mindful that I have serious doubts that that is  
16 ultimately going to work, and we'll -- but in this business,  
17 we all know we take it as it comes, and we'll figure things  
18 out as we go forward.

19 MR. HYMAN: Your Honor, I think that the order  
20 that you have now has a different time. And I don't know  
21 whether you'd like us to submit a revised order --

22 THE COURT: Yeah, if you'd submit a revised order.

23 MR. HYMAN: Right.

24 THE COURT: I'd say make it 2:00. And actually,  
25 make it 2:30 just in an abundance of caution. And I'll wait

1 to get that order.

2 MR. HYMAN: And we'll add some language regarding  
3 the (indiscernible).

4 MS. SCHWEITZER: Your Honor, there's just one  
5 thing I realized. The copy of the order we have doesn't  
6 have a deadline to object. So, I hear everything you're  
7 saying, but what is our placeholder deadline to object to  
8 this being put in there? If it's the 11th, we could say the  
9 5th? I mean, a week before --

10 THE COURT: It's the 10th.

11 MS. SCHWEITZER: Oh, I'm sorry, the 10th.

12 THE COURT: So, I would say -- but then would need  
13 to be time need to be time -- and we know this is contested,  
14 right?

15 MS. SCHWEITZER: Yes.

16 THE COURT: So, there'd need to be time for a  
17 reply as well. So, if there wasn't a holiday -- there is --  
18 I would've said Monday the 1st and then Friday the 5th so  
19 I'd have everything in time. But there is a holiday. So,  
20 any suggestions?

21 MS. SCHWEITZER: So, the 10th -- I guess the reply  
22 -- our replies would be due on the 5th if the hearing's on  
23 the 10th? It'd be --

24 THE COURT: I think we're closed on the 5th.

25 MS. SCHWEITZER: So, is it the 3rd or the 8th?

1 THE COURT: But you can still file them.

2 MS. SCHWEITZER: Right. It's when you would need  
3 -- well, I guess -- I mean, on the assumption we go forward,  
4 when would you... The reply on the 8th and the...

5 THE COURT: So, well when I'd like to have it so I  
6 can read something, and I believe that I have on the --  
7 yeah, I'm at the federal Judicial Center (indiscernible)  
8 here for bankruptcy judges (indiscernible) 9th and half of  
9 the 10th. So, my thought is I'd want to have all briefing  
10 finished on the 5th so I could (indiscernible) time to get  
11 this stuff done.

12 So, I don't know whether the 1st for an objection  
13 and the 5th for a reply works. But I recognize I don't have  
14 to answer that. Any significant others with whom you may  
15 have made plans over July 4th.

16 MR. HYMAN: My colleagues Mr. Hitchings  
17 (indiscernible) happy.

18 THE COURT: So, here's what I'd like to do. I  
19 would need things done by the 5th so I have time to read  
20 them, because I may end up reading them the weekend before  
21 the week starts. I'll leave it to you to work out what that  
22 means for purposes of you trying to figure out. So, the  
23 reply would have to be the 5th at 5:00. And I'll -- I mean,  
24 does it work to have Monday the 1st at noon be the deadline  
25 for the opposition?



1 MS. SCHWEITZER: That works for us.

2 THE COURT: Does that work for the Debtors?

3 MR. HYMAN: Yes. Thank you, Your Honor.

4 THE COURT: All right. So, let's go with those.

5 Monday the 1st at noon, and the 5:00 on the 5th. And we'll  
6 use those and I 'll see where we end up.

7 All right. Anything else for this afternoon?

8 MS. SCHWEITZER: Not from me, Your Honor.

9 MR. HYMAN: Not from me, Your Honor. We really  
10 appreciate the time you spent with us --

11 THE COURT: No, no, that's fine.

12 MR. HYMAN: -- and the expedited nature of the  
13 hearing.

14 THE COURT: We will -- I look forward to an  
15 interesting case, hopefully not too interesting. And I'll  
16 be talking to you all next week.

17 MS. SCHWEITZER: Thank you, Your Honor.

18 THE COURT: Thank you very much.

19 MR. HYMAN: Thank you very much, Your Honor.

20 (Whereupon these proceedings were concluded at 4:23 PM)

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25

C E R T I F I C A T I O N

I, Sonya Ledanski Hyde, certified that the foregoing transcript is a true and accurate record of the proceedings.

Sonya

Ledanski Hyde

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[&amp; - additional]

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